

Action

MEMORANDUM

November 13, 2009

TO: County Council

FROM: Amanda M. Mihill, Legislative Analyst *amihill*

SUBJECT: **Action:** Bill 19-07, Eating and Drinking Establishments – Nutrition Labeling, Resolution to adopt Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on menu boards and menus.

Health and Human Services Committee recommendation (3-0): enact Bill 19-07 and the Board of Health Regulation with the following amendments:

- amend Bill 19-07 to reflect the federal menu labeling proposal, which includes raising the applicability threshold to establishments that are part of a chain with 20 or more locations and require establishments to post only calorie information on menus/menu boards, but require establishments to provide the following information in writing on request: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, fiber, and protein (see page 4 for additional amendments); and
- exclude grocery stores from the menu labeling requirement.

Bill 19-07, Eating and Drinking Establishments – Nutrition Labeling, and the Resolution to adopt a Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on menu boards and menus, sponsored by Councilmembers Leventhal and Trachtenberg, were introduced on July 31, 2007. A public hearing was held on September 18, 2007 at which speakers testified in support and opposition of Bill 19-07 and the Regulation.¹ The Health and Human Services Committee held a general discussion of the topic on June 18, 2007 and held worksessions on Bill 19-07 and the Regulation on September 14 and October 15, 2007, and October 29, 2009.

¹ Although this memorandum refers to Bill 19-07, any references or amendments discussed would also apply to the Board of Health Regulation unless the context indicates otherwise.

Background

What would Bill 19-07 require? As recommended by the Committee, Bill 19-07 would require eating and drinking establishments that are part of a chain with at least 20 national locations that offer the same type of menu to post the number of calories on menus and menu boards for any standardized menu item. Bill 19-07 would require establishments to provide the following information in writing on request: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, fiber, and protein. A standardized menu item would be defined as “a food or drink item as usually prepared and offered for sale.” A standardized menu item would not include temporary menu items,² test market menu items, daily specials, or items that are placed on counters for general use (e.g., condiment packets). For food in self-service facilities such as salad bars and buffet lines, the bill would require an establishment to post calorie information for a standard serving size on a food item tag next to the item. Bill 19-07 would take effect on July 1, 2010.

What health concerns does Bill 19-07 address? Detailed information regarding the health concerns Bill 19-07 is addressing is provided in legislative findings on ©2-5. In summary, increased caloric intake is a key factor contributing to the increase in obesity in the United States. Over the past two decades there has been a significant increase in the number of meals prepared and eaten outside the home. Studies have linked eating out with higher caloric intake and obesity and studies report that food from eating and drinking establishments is generally higher in calories and saturated fat and lower in nutrients such as calcium and fiber than home-prepared foods.³

The federal Nutrition Labeling and Education Act (NLEA),⁴ in effect since 1994, requires nutrition labeling on packaged foods sold in retail stores and using food labels is associated with healthier diets. A study in the USDA Agriculture Information Bulletin reported that Americans consume approximately one-third of their calories on food purchased in restaurants.⁵ However, the NLEA requires nutrition information for food served in restaurants only if a nutrient content or health claim is made about the food.⁶ It is difficult for consumers to limit caloric intake at restaurants because of the limited availability of nutrition information and the practice of serving food in larger-than-standard serving sizes.⁷

As noted above, increased caloric intake is a key factor contributing to the increase in obesity. According to the National Institutes of Health (NIH), obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders, and

² A temporary menu item is a food or drink item that “appears on the menu for less than 60 cumulative days per calendar year”.

³ Yunsheng Ma et. al., *Association between Eating Patterns and Obesity in a Free-living US Adult Population*, 158 *American Journal of Epidemiology* 85, 85-92 (2003); Biing-Hwan Lin & Elizabeth Frazão, *Away-From-Home Foods Increasingly Important to Quality of American Diet*, Agriculture Information Bulletin No. 749 (1999).

⁴ Pub. L. No. 101-535, 104 Stat. 2535.

⁵ Biing-Hwan, *supra* note 4.

⁶ 21 CFR § 101.10.

⁷ Center for Science in the Public Interest, *Anyone's Guess: The Need for Nutrition Labeling at Fast-Food and Other Chain Restaurants* (November 2003).

cancer.⁸ According to the Maryland Vital Statistics 2003 Annual Report, heart disease, cancer, stroke, and diabetes accounted for nearly 60 percent of all Maryland deaths in 2003.⁹ The Report cites heart disease, cancer, stroke, and diabetes, as the first, second, third, and fifth leading causes of Maryland deaths in 2003.¹⁰

NIH identified saturated fat as the biggest dietary cause of high low-density lipoprotein (LDL) cholesterol.¹¹ High LDL cholesterol levels lead to the buildup of cholesterol in arteries; the higher the level of LDL in a person's blood, the greater the risk of heart disease. The Maryland Behavioral Risk Factor Surveillance System (MBRFSS) indicated that nearly 34 percent of Maryland adults were diagnosed with high cholesterol in 2003.¹² As noted above, the Maryland Vital Statistics 2003 Report cited heart disease as the leading cause of death in Maryland during 2003; it accounted for over 27 percent of all deaths.¹³

NIH concluded that excess dietary sodium contributes to high blood pressure in people who are sensitive to sodium. High blood pressure can lead to congestive heart failure, kidney failure, and stroke.¹⁴ The MBRFSS indicated that approximately 25 percent of Maryland adults were diagnosed with high blood pressure in 2003.¹⁵

Action in other Jurisdictions. A number of jurisdictions have enacted or implemented menu labeling laws. A chart compiled by the Center for Science in the Public Interest (CSPI) shows the status of menu labeling legislation nationwide (©45). According to information from CSPI, the following locations have implemented menu labeling legislation: New York City and Westchester County, New York; King County, Washington; and Multnomah County, Oregon. The following locations have passed, but not necessarily implemented, similar legislation: Oregon; California; Maine; Massachusetts; Albany, Suffolk, and Ulster Counties, New York; Philadelphia, Pennsylvania; and Davidson County, Tennessee. (See ©115 and ©89 for news articles regarding the potential effectiveness of the New York City regulation.)

In addition, CSPI and the National Restaurant Association both support a bipartisan bill in Congress, which is part of the health care reform debate, to require nutrition labeling at restaurants that are part of a chain with 20 or more locations (see press releases on ©75-76 and a copy of the proposal on ©65-74). The national proposal would require chain restaurants to post the number of calories on the menu/menu board and provide the following nutrition information in writing on request: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, fiber, and protein.

Councilmembers should note that the federal proposal, if it passes, would preempt state and local governments from enforcing certain local nutrition labeling requirements. Under that proposal,

⁸ National Institutes of Health Medical Encyclopedia, <http://www.nlm.nih.gov/medlineplus/ency/article/007297.htm>.

⁹ Maryland Department of Health & Mental Hygiene, *Maryland Vital Statistics, Annual Report 2003*, p. 19.

¹⁰ *Id.*

¹¹ National Institutes of Health Medical Encyclopedia, <http://www.nlm.nih.gov/medlineplus/ency/article/002468.htm>

¹² Maryland Department of Health & Mental Hygiene, *Burden of Overweight and Obesity in Maryland*, p. 24 (2005).

¹³ Maryland Department of Health & Mental Hygiene, *Maryland Vital Statistics, Annual Report 2003*, p. 19.

¹⁴ National Institutes of Health Medical Encyclopedia, <http://www.nlm.nih.gov/medlineplus/ency/article/000468.htm>

¹⁵ Maryland Department of Health & Mental Hygiene, *Burden of Overweight and Obesity in Maryland*, p. 24.

state and local governments would be preempted from enacting requirements that are different from the federal law that would apply to restaurants that are part of a chain of 20 or more locations or restaurants that voluntarily comply with the federal law. The Council would not be prohibited from enacting legislation that is identical to the federal law or legislation that would apply to a restaurant that is part of a chain of less than 20 locations and does not voluntarily comply with the federal proposal.

Issues/Committee Recommendations

1. Should the Council wait to see if Congress enacts the federal proposal? As noted above, Congress is currently considering federal legislation that would require certain restaurants to provide certain nutrition information and if that legislation passes as proposed, state and local governments would be preempted from enforcing certain local requirements. Particularly in light of the fact that the federal proposal has not been enacted to date and the fact that consumers could have nutrition information sooner under the County proposal, **the Committee unanimously recommended enacting Bill 19-07.** To address the issues of potential federal preemption, **the Committee recommended Bill 19-07 be amended to mirror the federal proposal in as many respects as possible.** Committee members understood that after federal labeling is enacted, County law may need to be amended to ensure that County law is identical to federal law. To mirror the federal proposal, **the Committee recommended amending Bill 19-07 as follows:**

- raise the applicability threshold from establishments that are part of a chain with 10 or more locations to establishments that are part of a chain with 20 or more locations (©6, line 123);
- require establishments to post only calorie information on menus and menu boards, but require establishments to provide the following information in writing on request: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, fiber, and protein (©7, line 146-159);
- require statements regarding recommended caloric intake and the availability of other nutritional information on the menu or menu board (©9, line 202-208);
- require calorie information on a placard next to an item in a self-serve facility (such as salad bars, buffet lines, and cafeteria lines) (©8, line 165-170);
- exclude items on the menu for less than 60 days (as introduced, Bill 19-07 excluded items on the menu for less than 30 days) (©6, line 108-111);
- exclude items on the menu that is a daily special (©6, line 116-117);
- require the posted information to be “clear and conspicuous” and “adjacent to” the menu item (©7-8, line 160-164);
- clarify that marketing materials are excluded from labeling requirements;

2. How should the information be posted for items with a range of caloric possibilities? At some restaurants, a menu item can be listed generally, but within that menu option, there could be a variety of flavors, which may have different nutrition content. For instance, an establishment might list “ice cream” on the menu, but have 10 flavors a consumer could choose from. As introduced, Bill 19-07 but would require the range of calories for all flavors or varieties. The federal proposal specifically defers this issue to regulations. At its worksession on October 29, the Committee recommended that Bill 19-07 mirror the federal proposal “as close

as possible". In this case, however, it is not certain what the federal law will state. Therefore, the amended version of Bill 19-07 retains the range requirement (©8, lines 173-180). This is one specific instance where Bill 19-07 does not mirror the proposed federal legislation. Should the federal bill pass, the County could not enforce this specific provision.

3. How should the information be posted for family meals? Mr. Lundy urged the Council to amend Bill 19-07 to clarify how information is provided for meals intended to serve more than 1 person (©96). The federal proposal requires that information be posted "as usually prepared and offered for sale" which means that if a restaurant serves a bucket of chicken or whole pizza, for instance, the establishment would be required to post the total number of calories (not calories per serving) for the item. **The Committee recommended that Bill 19-07 mirror the federal proposal in this respect.** Nothing in Bill 19-07 or the federal proposal would prohibit the establishment from posting the number of calories per serving in addition to the total number of calories.

4. Should Bill 19-07 apply to grocery stores and convenience stores? The Council received requests from the grocery store and convenience store industries who requested that they be excluded from Bill 19-07. Council staff understands that the federal proposal would apply to grocery and convenience stores, but the New York City Regulation does not because the New York City Board of Health does not have jurisdiction over grocery and convenience stores. **The Committee recommended excluding grocery stores from the menu labeling requirements (pending federal regulations after the federal proposal is enacted), but including convenience stores.** The Committee decided to apply the bill to convenience stores at least in part because at the last worksession, it was assumed the New York City regulation applied to those stores and they had already complied with that regulation. Since the last worksession, Council staff has learned that both grocery stores and convenience stores are excluded from labeling requirements in New York City. (See ©112 for a letter on behalf of 7-11 requesting to be excluded from labeling requirements)

5. Should Bill 19-07 apply to movie theaters? The Council received a request from Doug Murdoch on behalf of the Mid-Atlantic National Association of Theatre Owners to exclude movie theaters from Bill 19-07's menu labeling requirement (©113-114). Council staff understands that movie theaters are included in the federal menu labeling proposal. **The Committee did not recommend excluding movie theaters from Bill 19-07.**

6. When should Bill 19-07 take effect? The Committee recommended Bill 19-07 take effect on July 1, 2010 (©9, line 217).

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Bill No. 19-07
Concerning: Eating and Drinking
Establishments – Nutrition Labeling
Revised: 10/27/2009 Draft No. 4
Introduced: July 31, 2007
Expires: [[February 28, 2009]]
August 31, 2010
Enacted: _____
Executive: _____
Effective: July 1, 2010
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Leventhal and Trachtenberg

AN ACT to:

- (1) require certain eating and drinking establishments to post certain nutrition information on menu boards and menus; and
- (2) generally amend County law regarding eating and drinking establishments.

By adding

Montgomery County Code
Chapter 15, Eating and Drinking Establishments
Section 15-5A

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 15-15A is added as follows:**

2 **15-15A. Nutrition Labeling.**

3 (a) Legislative Findings.

4 (1) Research reveals the strong link between diet and health and that
5 diet-related diseases begin early in life.

6 (2) Increased caloric intake is a key factor contributing to the
7 increase in obesity in the United States. According to the Centers
8 for Disease Control and Prevention, two-thirds of American
9 adults are overweight or obese, and the rates of obesity have
10 tripled in children and teens since 1980. Data from the Maryland
11 Behavioral Risk Factor Surveillance System indicated that 50.8
12 percent of Montgomery County residents were overweight or
13 obese in 2005. According to the National Institutes of Health,
14 obesity increases the risk for diseases such as diabetes,
15 cardiovascular disease (heart disease and stroke), osteoarthritis,
16 sleep disorders, and cancer. According to the Maryland Vital
17 Statistics 2003 Annual Report, heart disease, cancer, stroke, and
18 diabetes accounted for nearly 60 percent of all deaths in
19 Maryland in 2003. The Report cites heart disease, cancer, stroke,
20 and diabetes as the first, second, third, and fifth leading causes of
21 deaths in Maryland in 2003. The United States Department of
22 Health and Human Services cited that in 2000 the economic cost
23 of obesity was \$117 billion in the United States.

24 (3) The National Institutes of Health identified saturated fat as the
25 biggest dietary cause of high low-density lipoprotein cholesterol.
26 High LDL cholesterol levels lead to the build up of cholesterol in
27 arteries; the higher the level of LDL in a person's blood, the

greater the risk of heart disease. In the United States, heart disease is the leading cause of death and a leading cause of disability among working adults. The American Heart Association estimated that the economic cost of heart disease and stroke in the United States in 2007 will be \$431.8 billion in health care expenditures and lost productivity. The Maryland Behavioral Risk Factor Surveillance System indicated that nearly 34 percent of Maryland adults were diagnosed with high cholesterol in 2003. Overweight or obese adults were more likely to have high cholesterol than normal weight adults. The Maryland Vital Statistics 2003 Report cited heart disease as the leading cause of death in Maryland during 2003, which accounted for over 27 percent of all deaths.

(4) The National Institutes of Health identified that excess dietary sodium will contribute to high blood pressure in people who are sensitive to sodium. High blood pressure can lead to congestive heart failure, kidney failure, and stroke. Nearly 1 in 3 American adults have high blood pressure. The Maryland Behavioral Risk Factor Surveillance System indicated that approximately 25 percent of Maryland adults were diagnosed with high blood pressure in 2003. As with high cholesterol, obese adults were more likely to have high blood pressure than normal weight adults.

(5) Over the past 2 decades, there has been a significant increase in the number of meals prepared and eaten outside of the home. A study in the USDA Agriculture Information Bulletin reported that Americans consume approximately one-third of their calories on

55 food purchased in eating and drinking establishments, and the
56 National Restaurant Association estimated that Americans spend
57 nearly 48 percent of total food dollars on food purchased from
58 eating and drinking establishments. Studies in the USDA
59 Agriculture Information Bulletin, the International Journal of
60 Obesity, the American Journal of Public Health, and the
61 American Journal of Epidemiology link eating out with obesity
62 and higher caloric intake. Studies in the USDA Agriculture
63 Information Bulletin and the American Journal of Epidemiology
64 report that food from eating and drinking establishments is
65 generally higher in calories and saturated fat and lower in
66 nutrients, such as calcium and fiber, than home-prepared foods.

67 (6) The federal Nutrition Labeling and Education Act, in effect since
68 1994, requires nutrition labeling on packaged foods sold in retail
69 stores. Using food labels is associated with healthier diets. The
70 United States Department of Health and Human Services cited
71 that three-quarters of American adults report using food labels on
72 packaged foods, and a report from the Food and Drug
73 Administration cited that 48 percent of people report that the
74 nutrition information on food labels has caused them to change
75 the food product they purchased.

76 [(7)] Nutrition information is required for food served in an eating
77 and drinking establishment only if a nutrient content or health
78 claim is made about the food. It is difficult for consumers to limit
79 caloric intake at eating and drinking establishments because of
80 the limited availability of nutrition information and the practice
81 of serving food in larger-than-standard serving sizes. Studies in

the Journal of Marketing and the American Journal of Clinical Nutrition show that people eat greater quantities of food when served more. A study in the Journal for Consumer Affairs indicated that people make healthier choices in eating and drinking establishments when provided with nutrition information at the point of purchase.

(b) Definitions. In this Section, the following words have the meaning indicated:

(1) “Convenience store” means a retail business less than 5,000 square feet that has a primary emphasis placed on providing the public a convenient location to quickly purchase from a wide array of consumable products and services.

(2) “Grocery store” means a store primarily engaged in the retail sale of canned foods, dry goods, fresh fruits and vegetables, fresh and prepared meats, fish, and poultry, and nonfood grocery products. In this Section, “grocery store” does not include a convenience store.

(3) “Menu” or “menu board” means [[a printed or handwritten list, provided at an eating and drinking establishment, of one or more food or drink items available at]] the primary writing of an eating and drinking establishment from which a consumer makes an order selection. [[A menu [[includes a beverage]] does not include a wine list.]]

(4) “Standardized Menu Item” or “Menu Item” means a food or drink item [[served in portions for which the size and content are standardized]] as usually prepared and offered for sale.

“Standardized menu item” does not include a food or drink item that:

- (A) appears on the menu for less than ~~[[30]]~~ 60 cumulative days per calendar year; ~~[[or]]~~
- (B) is not listed on a menu or menu board, including an item that is placed on a table or counter for general use without charge~~[[.]]~~; ~~[[or]]~~
- (C) is a test-market menu item that appears on the menu for less than 90 cumulative days per calendar year; or
- (D) is a daily special.

[[3)] “Wine list” means a printed or handwritten list, provided at an eating and drinking establishment, of the wines available as sold by the bottle.]]

(c) Applicability.

(1) This Section applies to an eating or drinking establishment that is part of a chain with at least ~~[[10]]~~ 20 locations ~~[[nationally]]~~ in the United States and that:

- ~~[[1)]~~ (A) ~~[[Does]]~~ does business under the same trade name, regardless of the ownership of individual locations; and
- ~~[[2)]~~ (B) ~~[[Offers]]~~ offers ~~[[predominantly]]~~ substantially the same ~~[[type of]]~~ menu items.

(2) This Section applies to a convenience store, but does not apply to a grocery store.

(d) Labeling Required.

(1) ~~[[Except as provided in subsection (e), an]]~~ An eating and drinking establishment must post the ~~[[following nutrition information]]~~ the number of calories, calculated according to

applicable federal law, for any standardized menu item on each menu or menu board [[next to or beneath]] adjacent to the [[listing]] name of that item[:

(A) number of calories;

(B) grams of saturated fat; and

(C) milligrams of sodium]]:

[(2) An eating and drinking establishment is not required to post nutrition information for menu items that are not standardized.]]

[(3) The posted nutrition information must be within 20% of the actual nutrition content of a menu item or the margin of error allowed by federal law, whichever is the smallest variation.]]

(2) An eating and drinking establishment must make the following nutrition information available in writing on request on its premises:

(a) calories;

(b) calories from fat;

(c) total fat;

(d) saturated fat;

(e) cholesterol;

(f) sodium;

(g) total carbohydrates;

(h) complex carbohydrates;

(i) sugars;

(j) fiber; and

(k) protein.

[(2)] (3) The required nutrition information must be clear and conspicuous and located [[next to or beneath]] adjacent to each

menu item [[in a size and typeface]] [[at least as large as the name of the menu item or its price]] [[that is clear and conspicuous]] so as to be clearly associated with the menu item.

(4) Self-Service Food. For self-service food an eating and drinking establishment must post a sign with the information required in (d)(1) per serving or per item adjacent to each food offered for sale. In this paragraph, “self-service food” includes:

(A) items in a salad bar, buffet line, cafeteria line, or a similar self-service facility;

(B) self-service beverages; and

(C) food that is on display and visible to customers.

~~[[(3)]]~~ (5) Range of Calorie Content Required for Different Flavors and Varieties. If an eating and drinking establishment offers a standardized menu item in more than one flavor or variety and lists the item as a single menu item, (such as beverages, ice cream, pizza, or doughnuts), the establishment must post the range of nutrition information for each size offered for sale. The range must include the minimum and maximum values for each flavor or variety of that item.

[[(e)]] Menu Boards. If an eating and drinking establishment uses a menu board, the establishment may limit the nutrition information posted on the menu board to the number of calories per menu item. However, the establishment must provide the additional nutrition information required in subsection (d)(1) to each customer in writing on request. For purposes of this Section, a single-item list must be treated as a menu board.]]

188 [(f)] [(1) The bottom of each menu page must contain the following
 189 statement:

190 Recommended limits for a 2,000 calorie daily diet are 20
 191 grams of saturated fat and 2,300 milligrams of sodium.

192 (2) Each menu board must contain the following statement:

193 A 2,000 calorie daily diet is used as the basis for general
 194 nutrition advice; however, individual calorie needs may
 195 vary.

196 (3) An eating and drinking establishment may include the following
 197 statement on a menu or menu board:

198 The nutrition information provided is based on standard
 199 recipes and product formulations. Small variations may
 200 occur because of differences in preparation, serving sizes,
 201 ingredients, or special orders.]]

202 (e) Required statements. An eating and drinking establishment must
 203 include the following statements on each menu and menu board:

204 (1) a statement regarding suggested daily caloric intake as
 205 determined by the federal Department of Health and Human
 206 Services; and

207 (2) a statement regarding the availability of the written information
 208 required in paragraph (d)(2).

209 [(g) Substitute Ingredients. An establishment may use a substitute
 210 ingredient for any menu item for no more than 30 days without
 211 replacing the menu or menu board. However, if an establishment
 212 permanently substitutes an ingredient in any menu item, the
 213 establishment must comply with this Section within 90 days.]]

[[h]] (f) Enforcement. When an eating and drinking establishment is inspected under Section 15-3, the Director must verify that required nutrition information is posted. The Director is not required to verify the accuracy of the information provided, but may request the establishment to document its accuracy. If the Director requests the establishment to document the accuracy of the nutrition information posted, the establishment must provide verification of the accuracy of the posted information in 30 days.

[(i)] Nothing in this Section is intended to create a private right of action for civil damages or attorney's fees.]]

Sec. 2. Effective Date.

Section 15-15A, inserted by Section 1 of this Act takes effect on July 1, 2010.

[:

(a) August 1, 2008 for any eating and drinking establishment that must comply with a similar menu labeling requirement in any other jurisdiction by August 1, 2008; and

(b)] [[August 1, 2009]] [[for all other eating and drinking establishments]][[.]]

Approved:

Philip M. Andrews, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Resolution No.: _____
Introduced: July 31, 2007
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH

By: Councilmembers Leventhal and Trachtenberg

Subject: **Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on menu boards and menus.**

Background

1. County Code §2-65, as amended effective August 10, 2000, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202(d) authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On [Date], the County Council held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
4. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that requiring nutrition labeling is necessary to protect the health of patrons of eating and drinking establishments in the County.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following regulation:

Nutrition labeling in eating and drinking establishments

(a) Legislative Findings.

- (1) Research reveals the strong link between diet and health and that diet-related diseases begin early in life.
- (2) Increased caloric intake is a key factor contributing to the increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980. Data from the Maryland Behavioral Risk Factor Surveillance System indicated that 50.8 percent of Montgomery County residents were overweight or obese in 2005. According to the National Institutes of Health, obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders, and cancer. According to the Maryland Vital Statistics 2003 Annual Report, heart disease, cancer, stroke, and diabetes accounted for nearly 60 percent of all deaths in Maryland in 2003. The Report cites heart disease, cancer, stroke, and diabetes as the first, second, third, and fifth leading causes of deaths in Maryland in 2003. The United States Department of Health and Human Services cited that in 2000 the economic cost of obesity was \$117 billion in the United States.
- (3) The National Institutes of Health identified saturated fat as the biggest dietary cause of high low-density lipoprotein cholesterol. High LDL cholesterol levels lead to the build up of cholesterol in arteries; the higher the level of LDL in a person's blood, the greater the risk of heart disease. In the United States, heart disease is the leading cause of death and a leading cause of disability among working adults. The American Heart Association estimated that the economic cost of heart disease and stroke in the United States in 2007 will be \$431.8 billion in health care expenditures and lost productivity. The Maryland Behavioral Risk Factor Surveillance System indicated that nearly 34 percent of Maryland adults were

32 diagnosed with high cholesterol in 2003. Overweight or obese adults were
33 more likely to have high cholesterol than normal weight adults. The
34 Maryland Vital Statistics 2003 Report cited heart disease as the leading
35 cause of death in Maryland during 2003, which accounted for over 27
36 percent of all deaths.

37 (4) The National Institutes of Health identified that excess dietary sodium will
38 contribute to high blood pressure in people who are sensitive to sodium.
39 High blood pressure can lead to congestive heart failure, kidney failure,
40 and stroke. Nearly 1 in 3 American adults have high blood pressure. The
41 Maryland Behavioral Risk Factor Surveillance System indicated that
42 approximately 25 percent of Maryland adults were diagnosed with high
43 blood pressure in 2003. As with high cholesterol, obese adults were more
44 likely to have high blood pressure than normal weight adults.

45 (5) Over the past 2 decades, there has been a significant increase in the
46 number of meals prepared and eaten outside of the home. A study in the
47 USDA Agriculture Information Bulletin reported that Americans consume
48 approximately one-third of their calories on food purchased in eating and
49 drinking establishments, and the National Restaurant Association
50 estimated that Americans spend nearly 48 percent of total food dollars on
51 food purchased from eating and drinking establishments. Studies in the
52 USDA Agriculture Information Bulletin, the International Journal of
53 Obesity, the American Journal of Public Health, and the American Journal
54 of Epidemiology link eating out with obesity and higher caloric intake.
55 Studies in the USDA Agriculture Information Bulletin and the American
56 Journal of Epidemiology report that food from eating and drinking
57 establishments is generally higher in calories and saturated fat and lower in
58 nutrients, such as calcium and fiber, than home-prepared foods.

59 (6) The federal Nutrition Labeling and Education Act, in effect since 1994,
60 requires nutrition labeling on packaged foods sold in retail stores. Using
61 food labels is associated with healthier diets. The United States

Department of Health and Human Services cited that three-quarters of American adults report using food labels on packaged foods, and a report from the Food and Drug Administration cited that 48 percent of people report that the nutrition information on food labels has caused them to change the food product they purchased.

[[(7)] Nutrition information is required for food served in an eating and drinking establishment only if a nutrient content or health claim is made about the food. It is difficult for consumers to limit caloric intake at eating and drinking establishments because of the limited availability of nutrition information and the practice of serving food in larger-than-standard serving sizes. Studies in the Journal of Marketing and the American Journal of Clinical Nutrition show that people eat greater quantities of food when served more. A study in the Journal for Consumer Affairs indicated that people make healthier choices in eating and drinking establishments when provided with nutrition information at the point of purchase.

(b) **Definitions.**

- (1) Any term used in this regulation has the same meaning as in Section 15-1 of the County Code if the term is defined in that Section.
- (2) “Convenience store” means a retail business less than 5,000 square feet that has a primary emphasis placed on providing the public a convenient location to quickly purchase from a wide array of consumable products and services.
- (3) “Grocery store” means a store primarily engaged in the retail sale of canned foods, dry goods, fresh fruits and vegetables, fresh and prepared meats, fish, and poultry, and nonfood grocery products. In this Section, “grocery store” does not include a convenience store.
- (4) “Menu” or “menu board” means [[a printed or handwritten list, provided at an eating and drinking establishment, of one or more food or drink items available at]] the primary writing of an eating and drinking establishment

from which an consumer makes an order selection. [[A menu [[includes a beverage]] does not include a wine list.]]

~~[[3]]~~ (5) “Standardized menu item” or “menu item” means a food or drink item
[[served in portions for which the size and content are standardized]] as
usually prepared and offered for sale. “Standardized menu item” does not
include a food or drink item that:

(A) appears on the menu for less than ~~[[30]]~~ 60 cumulative days per
calendar year; ~~[[or]]~~

(B) is not listed on a menu or menu board, including an item that is
placed on a table or counter for general use without charge~~[[.]]; or~~

(C) is a test-market menu item that appears on the menu for less than 90
cumulative days per calendar year[[.]]; or

(D) is a daily special.

~~[[3]]~~ “Wine list” means a printed or handwritten list, provided at an eating and
drinking establishment, of the wines available as sold by the bottle.]]

(c) **Applicability.**

(1) This regulation applies to an eating or drinking establishment that is part of a
chain with at least ~~[[10]]~~ 20 locations ~~[[nationally]]~~ in the United States and
that:

~~[[1]]~~ (A) ~~[[Does]]~~ does business under the same trade name, regardless of
the ownership of individual locations; and

~~[[2]]~~ (B) ~~[[Offers]]~~ offers ~~[[predominantly]]~~ substantially the same ~~[[type~~
of]] menu items.

(2) This Section applies to a convenience store, but does not apply to a grocery
store.

(d) **Labeling Required.**

(1) [[Except as provided in subsection (e), an]] An eating and drinking
establishment must post the [[following nutrition information]] the number
of calories, calculated according to applicable federal law, for any

standardized menu item on each menu or menu board [[next to or beneath]]
adjacent to the [[listing]] name of that item[:

- (A) number of calories;
- (B) grams of saturated fat; and
- (C) milligrams of sodium]].

[(2) An eating and drinking establishment is not required to post nutrition
information for menu items that are not standardized.]]

[(3) The posted nutrition information must be within 20% of the actual nutrition
content of a menu item or the margin of error allowed by federal law,
whichever is the smallest variation.]]

(2) An eating and drinking establishment must make the following nutrition
information available in writing on request on its premises:

- (a) calories;
- (b) calories from fat;
- (c) total fat;
- (d) saturated fat;
- (e) cholesterol;
- (f) sodium;
- (g) total carbohydrates;
- (h) complex carbohydrates;
- (i) sugars;
- (j) fiber; and
- (k) protein.

[(2)] (3) The required nutrition information must be clear and conspicuous and
located [[next to or beneath]] adjacent to each menu item [[in a size and
typeface]] [[at least as large as the name of the menu item or its price]] [[that
is clear and conspicuous]] so as to be clearly associated with the menu item.

(4) **Self-Service Food.** For self-service food an eating and drinking
establishment must post a sign with the information required in (d)(1) per

149 serving or per item adjacent to each food offered for sale. In this paragraph,
150 “self-service food” includes:

151 (A) items in a salad bar, buffet line, cafeteria line, or a similar self-
152 service facility;

153 (B) self-service beverages; and

154 (C) food that is on display and visible to customers.

155 [[3)] (5) *Range of Calorie Content Required for Different Flavors and Varieties.*

156 If an eating and drinking establishment offers a standardized menu item in
157 more than one flavor or variety and lists the item as a single menu item,
158 (such as beverages, ice cream, pizza, or doughnuts), the establishment must
159 post the range of nutrition information for each size offered for sale. The
160 range must include the minimum and maximum values for each flavor or
161 variety of that item.

162 **[(e) Menu Boards.** If an eating and drinking establishment uses a menu board, the
163 establishment may limit the nutrition information posted on the menu board to the
164 number of calories per menu item. However, the establishment must provide the
165 additional nutrition information required in subsection (d)(1) to each customer in
166 writing on request. For purposes of this Section, a single-item list must be treated as
167 a menu board.]]

168 **[(f)] [(1) The bottom of each menu page must contain the following statement:**

169 Recommended limits for a 2,000 calorie daily diet are 20 grams of
170 saturated fat and 2,300 milligrams of sodium.

171 **(2) Each menu board must contain the following statement:**

172 A 2,000 calorie daily diet is used as the basis for general nutrition
173 advice; however, individual calorie needs may vary.

174 **(3) An eating and drinking establishment may include the following statement**
175 **on a menu or menu board:**

176 The nutrition information provided is based on standard recipes and
177 product formulations. Small variations may occur because of

differences in preparation, serving sizes, ingredients, or special orders.]]

(e) **Required statements.** An eating and drinking establishment must include the following statements on each menu and menu board:

(1) a statement regarding suggested daily caloric intake as determined by the federal Department of Health and Human Services; and

(2) a statement regarding the availability of the written information required in paragraph (d)(2).

[(g) **Substitute Ingredients.** An establishment may use a substitute ingredient for any menu item for no more than 30 days without replacing the menu or menu board. However, if an establishment permanently substitutes an ingredient in any menu item, the establishment must comply with this Section within 90 days.]]

[(h)] (f) **Enforcement.**

(1) Any violation of this regulation is a Class A civil violation. Each day a violation exists is a separate offense.

(2) The County Attorney or any affected party may file an action in a court with jurisdiction to enjoin repeated violations of this regulation.

(3) The Department of Health and Human Services must investigate each complaint alleging a violation of this regulation and take appropriate action, including issuing a civil citation when compliance cannot be obtained otherwise.

(4) When an eating and drinking establishment is inspected by the Department of Health and Human Services for compliance with Chapter 15, the Department must verify that required nutrition information is posted. The Director is not required to verify the accuracy of the information provided, but may request the establishment to document its accuracy. If the Director requests the establishment to document the accuracy of the nutrition information posted, the establishment must provide verification of the accuracy of the posted information in 30 days.

(5) The Director of Health and Human Services may suspend a license issued under Chapter 15 for up to three days if the Director finds, under the procedures of Section 15-16, that the operator of an eating and drinking establishment has knowingly and repeatedly violated this regulation.

Nothing in this Section is intended to create a private right of action for civil damages or attorney's fees.

(i) Applicability. This regulation applies Countywide.

(j) Severability. If the application of this regulation or any part of it to any facts or circumstances is held invalid, the rest of the regulation and its application to all other facts and circumstances is intended to remain in effect.

(k) Effective Date. This regulation takes effect on July 1, 2010:

(1) August 1, 2008 for any eating and drinking establishment that must comply with a similar menu labeling requirement in any other jurisdiction by August 1, 2008; and

(2) [[August 1, 2009]] [[for all other eating and drinking establishments]].

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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LEGISLATIVE REQUEST REPORT

Bill 19-07, Eating and Drinking Establishments – Nutrition Labeling

| | |
|---|---|
| DESCRIPTION: | Amends the current law governing eating and drinking establishments to require certain establishments to post the number of calories, grams of fat, and grams of sodium on menus for any standardized menu item. If an establishment uses a menu board, the establishment may post only calorie information on the menu board, but the establishment must provide the additional information in writing on request. |
| PROBLEM: | <p>Studies show that there is an increase in the number of Montgomery County, Maryland, and United States residents who are overweight or obese, which increases the risk for a variety of diseases, including heart disease, cancer, stroke, and diabetes. Saturated fat is the biggest dietary cause of high LDL cholesterol, which also increases the risk of heart disease. Excess dietary sodium can contribute to high blood pressure, which can lead to congestive heart failure, and stroke.</p> <p>There has been a significant increase in the number of meals prepared and eaten outside of the home. Federal law requires nutrition labeling on packaged foods sold in retail stores, but nutrition information is required for food served in eating and drinking establishments only if a nutrient content or health claim is made about the food. Studies indicate that people make healthier choices in establishments when provided with nutrition information at the point of purchase, but many establishments do not provide this information at the point of purchase.</p> |
| GOALS AND OBJECTIVES: | To provide County residents with information that will enable them to make more informed choices when eating food prepared away from home. |
| COORDINATION: | Department of Health and Human Services. |
| FISCAL IMPACT: | To be requested. |
| ECONOMIC IMPACT: | To be requested. |
| EVALUATION: | To be requested. |
| EXPERIENCE ELSEWHERE: | To be researched. |
| SOURCE OF INFORMATION: | Amanda Mihill, Legislative Analyst, 240-777-7815. |
| APPLICATION WITHIN MUNICIPALITIES: | To be researched. |
| PENALTIES: | Class A. |



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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

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MEMORANDUM

September 11, 2007

030460



TO: Marilyn J. Praisner, Council President
FROM: *Bev Fainberg;* Joseph F. Beach, Director, Office of Management and Budget
SUBJECT: Council Bill 19-07 – Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on boards and menus

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The Board of Health regulation applies to an eating and drinking establishment that is part of a chain with at least 10 locations nationally that does business under the same trade name and serves predominately the same type of menu. This regulation requires the posting of the following nutrition information: number of calories, grams of saturated fat, and milligrams of sodium on any standardized menu. If an eating and drinking establishment uses a menu board, the establishment may limit the nutrition information posted on the menu board to the number of calories per menu item. However the establishment must provide the additional nutrition information on grams of saturated, and milligrams of sodium to each customer in writing on request. The bottom of each menu page must contain the following statement: Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. Each menu board must contain the following statement: A 2,000 calorie diet is used as the basis for general nutrition advice, however, individual calorie need may vary.

FISCAL SUMMARY

Due to the minimal impact (.5WY and \$1,000 Operating Expense) of this bill, DHHS is not presently requesting positions or funds to implement this program. However, this regulation will result in an additional 2.8 % reduction in the mandated completion rate for routine food service inspections. Currently, Licensure and Regulatory Services (L&R) is only able to complete 80%-85% of its mandated Food Service Facility inspections.

To keep the workload impact to a minimum, initial and routine menu labeling inspections would be conducted in conjunction with routine food service inspections. In addition, an ongoing annual cost of \$1,000 would be needed to develop and distribute nutrition information requirements to certain food service facilities. The implementation phase would also require an estimated 600 work hours during the first year, which will result in short term impacts on other program areas L&R will absorb, including review and special projects outside of the routine inspection programs.

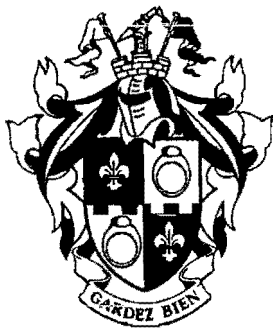
Office of the Director

The Menu Labeling Program will consist of developing enforcement interpretations, policies and guidelines; developing inspection procedures and inspection forms; providing a training program for Environmental Health Specialists; creation of a data base for tracking certain food service facilities; development of nutrition information for distribution to certain food service facilities; and a Menu Labeling review at the time plans and applications are submitted for review and approval. The Menu Labeling regulation will necessitate conducting approximately 725-750 initial inspections and 900-950 routine inspections the first year. In the subsequent years, 1650-1700 inspections would be conducted annually. This number will adjust as food service facilities meet the criteria for inclusion.

The following contributed to and concurred with this analysis: Richard Helfrich, Deputy Health Officer, DHHS; Jon Munley, Program Manager, Licensure and Regulatory Services, DHHS; Bonnie Leiter, Budget Manager, DHHS; and Kim Mayo, Senior Management and Budget Specialist, OMB.

jfb:km

cc: Timothy L. Firestine, CAO
Uma Ahluwalia, Director, Department of Health and Human Services
Dr. Ulder Tillman, Chief, Public Health Services, Department of Health and Human Services
Brady Goldsmith, OMB



Montgomery County Council

From the Office of Councilmember George Leventhal

July 31, 2007

Contact:

Walt Harris, Office of Council George Leventhal: 240-777-7945

Jason Shedlock, Office of Councilmember Phil Mendelson: 202-724-8779

MEDIA ADVISORY

Montgomery Councilmember Leventhal, D.C. Councilmember Mendelson Support Nutritional Labels for Restaurant Menus

*Rare Joint News Conference Featuring Montgomery, District
Legislators Set for Thursday, Aug. 2, at 10:30 a.m.*

ROCKVILLE, July 31, 2007—Montgomery County Councilmember George Leventhal and District of Columbia Councilmember Phil Mendelson will combine efforts in a rare joint news conference featuring members of the two neighboring Washington metropolitan area jurisdictions on Thursday, Aug. 2, to draw attention to their respective proposals to require chain restaurants to include certain nutritional information on menus and menu boards.

The news conference will be held at 10:30 a.m. near a McDonald's restaurant at 5300 Wisconsin Avenue NW, on the corner of Wisconsin and Western avenues in the District. The restaurant is located near by the Friendship Heights Metro Station on the Red Line.

On Tuesday, July 31, Councilmember Leventhal introduced a bill before the Montgomery County Council that would require a restaurant that is part of a chain of 10 or more national locations that offer the same type of menu to post the number of calories, grams of fat and grams of sodium on menus for any standardized menu item. Councilmember Duchy Trachtenberg is a co-sponsor of the bill.

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Councilmember Mendelson previously introduced a similar measure before the D.C. Council.

The Center for Science in the Public Interest (CSPI) has advocated for legislation that requires restaurants to provide nutritional information. CSPI asserts that providing this information will allow consumers to make informed choices when dining in restaurants.

"Among the most important functions of government is to do whatever possible to protect the health and safety of our residents," said Councilmember Leventhal. "Heart disease is the No. 1 killer of Marylanders and we think that our residents might like to be better informed about what they are eating in chain restaurants. By making this a region-wide program, we can help protect residents when they enter a chain restaurant regardless of what jurisdiction in which it is located."

Councilmember Mendelson said he agrees that the program is important, and so is the need to have it implemented in jurisdictions throughout the metropolitan area.

"Progressive jurisdictions across the country are acknowledging the importance of menu labeling as a tool to combat obesity, diabetes and other diet-related diseases," said Councilmember Mendelson. "I'm excited to join with our neighbors in Montgomery County to advocate for legislation that would provide consumers the information they need to make informed choices when they dine out."

If passed, the legislation introduced by Councilmember Leventhal would go in effect on Aug. 1, 2008. A public hearing on the proposal is scheduled for Sept. 18. Councilmember Mendelson introduced similar legislation in the District in March of this year, and the bill currently sits with the Council's Committee on Health. A hearing has yet to be scheduled.

The only jurisdictions nationally that have adopted a requirement for restaurants to include nutritional information on menus and menu boards are New York City and King County, Wash.. The regulation took effect in New York on July 1. The regulation will be implemented in King County on Aug. 1, 2008.

###

Attacking the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants

Scot Burton, PhD, Elizabeth H. Creyer, PhD, Jeremy Kees, PhD, and Kyle Huggins, MBA

Sixty-four percent of American adults are either overweight or obese, and the obesity epidemic shows few signs of weakening.^{1,2} Although the precise number of deaths attributable to obesity is difficult to estimate, obesity is clearly a major cause of preventable death.^{3,4,5} Not surprisingly, improving the healthfulness of the American diet has become a national health priority.^{4,6} The increasing prevalence of obesity-related diseases has been blamed, in part, on the increased consumption of foods prepared outside the home. Restaurant expenditures have increased consistently in recent decades; consumers now spend more than \$400 billion annually.⁷

Increased consumption of food prepared outside the home and the rising percentage of overweight Americans have made the failure to disclose the nutritional content of restaurant foods a significant public health issue. Whereas the Nutrition Labeling and Education Act increased the availability of nutrition information on packaged foods, foods purchased for immediate consumption are exempt from nutrition disclosure requirements. Typically, fast-food restaurants make nutrition information available to consumers upon request through brochures or on their corporate Web sites. Most dinner house restaurants (i.e., restaurants that offer table service in an informal atmosphere) disclose the nutrient content of their menu items only via the Internet, if at all.

Laws governing the provision of nutrition information in restaurants have been under consideration by Congress. The Menu Education

Objectives. Requiring restaurants to present nutrition information on menus is under consideration as a potential way to slow the increasing prevalence of obesity. Using a survey methodology, we examined how accurately consumers estimate the nutrient content of typical restaurant meals. Based on these results, we then conducted an experiment to address how the provision of nutrition information on menus influences purchase intentions and reported preferences.

Methods. For both the survey and experiment, data were analyzed using analysis of variance techniques.

Results. Survey results showed that levels of calories, fat, and saturated fat in less-healthy restaurant items were significantly underestimated by consumers. Actual fat and saturated fat levels were twice consumers' estimates and calories approached 2 times more than what consumers expected. In the subsequent experiment, for items for which levels of calories, fat, and saturated fat substantially exceeded consumers' expectations, the provision of nutrition information had a significant influence on product attitude, purchase intention, and choice.

Conclusions. Most consumers are unaware of the high levels of calories, fat, saturated fat, and sodium found in many menu items. Provision of nutrition information on restaurant menus could potentially have a positive impact on public health by reducing the consumption of less-healthy foods. (*Am J Public Health*. 2006;96:1669–1675. doi:10.2105/AJPH.2004.054973)

and Labeling Act would require chain restaurants with 20 or more outlets to provide key nutrient information. Legislation has also been proposed in several states (e.g., New York) that would require restaurants with 10 or more national locations to disclose the calorie and nutrient content, such as fat and saturated fat levels, of their foods.⁸ The Food and Drug Administration has initiated preliminary discussions about national standards for the provision of nutrition information in restaurants in response to these legislative initiatives.⁹

We examined the potential public health benefits of providing easily accessible nutrition information in restaurants through 2

studies. In study 1, a survey of consumers was used to examine the accuracy of consumers' expectations of the calorie, fat, saturated fat, and sodium levels of restaurant foods, and sought to determine whether the difference between expected and objective levels varied depending on the calorie and nutrient levels of the items. In study 2, drawing on findings from our survey, we investigated how the provision of nutrition information on a menu affected consumers' attitudes and purchase intentions when objective calorie and nutrient levels were either much higher or about the same as consumers expected.

STUDY 1: SURVEY

Recent legal and regulatory initiatives regarding nutrition information disclosure in restaurants are largely driven by an interest in the negative health consequences associated with the overconsumption of calories and nutrients such as fat, saturated fat, and sodium. This raises an important question: What are the expectations of reasonable consumers regarding

the nutrient levels of typical restaurant fare? Study 1 compared estimated calorie, fat, saturated fat, and sodium levels of foods typically served in dinner house restaurants with objective values determined by laboratory testing.

We proposed that most consumers lack the expertise necessary to estimate calorie and nutrient levels accurately. Because nutrition infor-

mation is difficult, if not impossible, to obtain in most dinner house restaurants, consumers are unlikely to realize that large restaurant portions of higher-calorie and higher-fat menu items (e.g., large bowl of fettuccine Alfredo) may exceed a full day's worth of fat and saturated fat. Therefore, we expected consumers to substantially underestimate calories and fat,

saturated fat, and sodium levels. This is consistent with previous research showing that when presented with large portion sizes of less-healthy foods, professional nutritionists underestimated calorie levels by between 200 and 600 calories.¹⁰ However, we anticipated that consumers' estimates would be more accurate for the food items lower in calories and fat (e.g., grilled chicken breast).

Thus, we hypothesized that (1) the difference between consumers' expectations and objective levels of calories and nutrients would be greater for items with higher levels of calories, fat, and sodium than for items with lower levels of calories, fat, and sodium (hypothesis 1) and that (2) a greater percentage of consumers would underestimate calorie and nutrient levels for menu items with higher levels of calories, fat, and sodium than for items with lower levels (hypothesis 2).

METHODS

Study participants were recruited through a statewide mail research panel and by undergraduate students. Ninety-seven percent of respondents had dined at a restaurant in the past month; the mean dining-out frequency was 14 meals. Almost all (97%) were high-school graduates and 81% had at least some college. The median age of respondents was 39 years, and 60% were female. The total sample size was 193 respondents. Results of hypotheses were consistent across demographic groups, the household research panel respondents, and the sample of adult consumers.

For 9 restaurant entrees, survey participants were given serving size information and brief item descriptions, similar to information that would appear on a menu. For each item, participants estimated calories, fat, saturated fat, and sodium levels. Measures of the objective (actual) calorie and nutrient levels for each of the 9 items were obtained from independent laboratory testing performed previously for dinner house restaurant items.¹¹ Three items shown in Table 1 (e.g., grilled chicken breast) were lower in calories and fat (370 to 640 calories; 6 to 26 g of fat) than other entrees. Five items (e.g., hamburger with fries) were much less healthy (930 to 1660 calories; 63 to 97 g of fat). (Although it can be argued that there are no "unhealthy"

TABLE 1—Accuracy of Consumers' Estimates of Calories, Fat, Saturated Fat, and Sodium for Restaurant Menu Items^{a,b}

| | Calories | | | | Fat | | | | Sodium | | | | Saturated Fat | | | |
|---|------------------------------------|--------------------------|---|---|-----------------------------------|-------------------------|--|--|---------------------------------------|-----------------------------|---|---|---|-----------------------------------|--|---|
| | Mean Calorie Expectation Estimates | Objective Calorie Levels | Mean Difference Between Expectations and Objective Levels (% of Misestimation) ^c | Percentage Underestimating Calories (Overestimating Calories) | Mean Fat Expectation Estimates, g | Objective Fat Levels, g | Mean Difference Between Expectations and Objective Levels (% of Misestimation) | Percent Underestimating Fat (Overestimating Fat) | Mean Sodium Expectation Estimates, mg | Objective Sodium Levels, mg | Mean Difference Between Expectations and Objective Levels (% of Misestimation) ^d | Percentage Underestimating Sodium (Overestimating Sodium) | Mean Saturated Fat Expectation Estimates, g | Objective Saturated Fat Levels, g | Mean Difference Between Expectations and Objective Levels (% of Misestimation) | Percentage Underestimating Saturated Fat (Overestimating Saturated Fat) |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| Less-healthy items | | | | | | | | | | | | | | | | |
| Means | 694 | 1336 | -642 (-93) | 90 (10) | 32 | 76 | -44 (-137) | 90 (10) | 457 | 2014 | -1557 (-341) | 93 (7) | 15 | 30 | -15 (-100) | 80 (20) |
| Fettuccine Alfredo | 704 | 1500 | -796 (-113) | 90 (10) | 31 | 97 | -66 (-213) | 96 (4) | 478 | 1030 | -552 (-115) | 88 (12) | 13 | 48 | -35 (-269) | 95 (5) |
| Hamburger and fries | 777 | 1240 | -463 (-60) | 88 (12) | 37 | 67 | -30 (-81) | 85 (15) | 523 | 1270 | -747 (-143) | 87 (13) | 17 | 29 | -12 (-71) | 77 (23) |
| Chicken fajitas | 704 | 1660 | -956 (-136) | 96 (4) | 31 | 63 | -32 (-103) | 82 (18) | 451 | 3660 | -3209 (-712) | 99 (1) | 14 | 19 | -5 (-36) | 67 (33) |
| Chef's salad | 452 | 930 | -478 (-106) | 90 (10) | 21 | 71 | -50 (-238) | 97 (3) | 328 | 2510 | -2182 (-665) | 99 (1) | 9 | 18 | -9 (-100) | 82 (18) |
| Patty melt and fries | 834 | 1350 | -516 (-62) | 84 (16) | 41 | 81 | -40 (-98) | 88 (12) | 504 | 1600 | -1096 (-217) | 93 (7) | 20 | 37 | -17 (-85) | 80 (20) |
| More-healthy items | | | | | | | | | | | | | | | | |
| Means | 500 | 543 | -43 (-9) | 73 (27) | 23 | 15 | 8 (35) | 37 (63) | 333 | 1180 | -847 (-254) | 92 (8) | 11 | 6 | 5 (45) | 30 (70) |
| Chicken breast | 479 | 640 | -161 (-34) | 78 (22) | 22 | 14 | 8 (36) | 37 (63) | 321 | 820 | -499 (-155) | 88 (12) | 10 | 5 | 5 (50) | 27 (73) |
| Pot roast | 663 | 620 | 43 (6) | 65 (35) | 33 | 26 | 7 (21) | 48 (52) | 425 | 1310 | -885 (-208) | 92 (8) | 15 | 11 | 4 (27) | 47 (53) |
| Turkey sandwich | 358 | 370 | -12 (-3) | 75 (25) | 15 | 6 | 9 (60) | 26 (74) | 254 | 1410 | -1156 (-455) | 96 (4) | 7 | 2 | 5 (71) | 17 (83) |
| Very unhealthy item: cheese fries with ranch dressing | 869 | 3010 | -2141 (-246) | 99 (1) | 40 | 217 | -177 (-443) | 97 (3) | 537 | 4890 | -4353 (-811) | 99 (1) | 21 | 91 | -70 (-333) | 93 (7) |

^aInformation provided for the 9 restaurant menu items included brief descriptions, size of the item in ounces, and any side dishes, all drawn from Jacobson and Hurley.¹¹

^bOn the basis of a 2000-calorie diet, the recommended daily values are 65 g for fat, 2400 mg for sodium, and 20 g for saturated fat.

^cThis is the difference between consumers' calorie estimates and the objective levels determined by laboratory testing. The percentage (shown in parentheses) is the mean difference divided by consumers' calorie expectations (e.g., -642/694 = -93%).

^dThis is the difference between consumers' sodium estimates and the objective levels determined by laboratory testing. The percentage (shown in parentheses) is the mean difference divided by consumers' expectations (e.g., -1557/457 = -341%).

foods within the context of an entire diet, for the sake of brevity, we use the terms “less” and “more healthful” to refer to menu items higher/lower in calories, fat, and sodium.) The remaining item (cheese fries with ranch dressing) had extremely high calorie and nutrient levels (3010 calories; 217 g of fat) and was termed “extremely unhealthy.”

RESULTS

For each menu item, Table 1 presents consumers' estimated (expected) calorie and nutrient levels, the objective levels, the mean difference between estimated and objective levels, and the percentage of consumers who either overestimated or underestimated calorie and nutrient levels. As shown, less-healthful items were judged to be higher in calories and fat than more-healthful items. This indicates that consumers are at least somewhat aware of nutritional differences among foods.

To test hypothesis 1, individual accuracy scores for calorie and nutrient levels were calculated by subtracting the objective levels from the consumer-estimated levels. These deviation scores were used as the dependent variables in a series of repeated-measures analyses of variance. Differences between consumers' estimates and objective values varied substantially across the more-healthful, less-healthful, and extremely unhealthy items.

For calories, results of the repeated-measures analyses were highly significant ($F=2530$; $P<.001$). On average, participants underestimated the calorie levels of less-healthful items by 642 calories; objective levels (1336 calories) were almost twice as high as consumers' estimates. The calorie content of cheese fries with ranch dressing (3010 calories) was underestimated by more than 2000 calories. Consumers slightly underestimated calories of the more-healthful items. Follow-up contrasts on the difference scores between expected and the objective calorie measures showed significant differences between the more- ($M=-43$) and less- ($M=-642$) healthful items, as well as between the less-healthful items and the extremely unhealthy item (t values=37.4 and 54.8, respectively; $P<.001$ for both comparisons). Thus, as posited, the differences between consumers' calorie estimates and objective levels were far greater for items with less-healthful nutritional content.

Similarly, consumers' expectations of nutrient levels (fat, saturated fat, and sodium) were less consistent with the objective levels for less-healthful items than for more-healthful items. Results from repeated-measures analyses of variance for each nutrient using the difference between consumers' estimates and objective values as the dependent variable resulted in significant findings for all 3 nutrients (F values exceeded 700 for all tests, $P<.001$).

For the less-healthful items, consumers underestimated fat and saturated fat levels by 44 g and 15 g, respectively—amounts that were more than 60% of the recommended daily values. Estimated fat and saturated fat levels for the more-healthful items were more consistent with objective levels (and even slightly higher). Consumers underestimated sodium levels for the more-healthful items by 847 mg, whereas they underestimated the amount of sodium in the less-healthful and extremely unhealthy items by 1557 mg and 4353 mg, respectively. For all nutrients, follow-up contrasts showed significant differences between the more-/less-healthful and less-/extremely unhealthy groups.

To address differences in percentages of consumers underestimating calorie and nutrient levels, cross-tabulation analyses were performed. As shown in Table 1, 90%, 99%, and 73% of respondents underestimated calories for the less-healthful, very unhealthy, and more-healthful items, respectively ($\chi^2=102.2$; $P<.001$). For fat, 90%, 97%, and 37% of respondents underestimated levels for the less-healthful, very unhealthy, and more-healthful items, respectively ($\chi^2=509.1$; $P<.001$). The pattern of findings was similar for saturated fat ($\chi^2=433.6$; $P<.001$). Although most consumers underestimated sodium levels of all the items, differences were significant ($\chi^2=13.3$; $P<.01$). These findings support hypothesis 2.

STUDY 2: EXPERIMENT

Given that consumers appear unaware of the high levels of calories, fat, and sodium found in many foods typically served in restaurants, the purpose of study 2 was to examine the potential public health benefits associated with the provision of nutrition information in restaurants. Specifically, we examined how providing nutrition information influenced consumers' attitudes and purchase intentions for restaurant menu items. For each menu entrée, consumers were also asked to estimate how likely they were to gain weight and develop heart disease if that food item was included as a regular part of their diet. These risk perceptions were expected to be influenced by the provision of nutrition information.

Classic expectancy disconfirmation theory can be used to predict consumers' responses

when accurate calorie and nutrient information are disclosed.^{12,13} According to this theory, consumers form initial expectations about specific product attributes. If the actual information or subsequent experience does not meet expectations, then attribute dissatisfaction will occur, which creates negative attitudes.¹² If actual product information exceeds expectations, positive attitudes result.

Study 1 showed that calories, fat, and sodium in less-healthful restaurant menu items are much higher than consumers expect. However, the objective nutrient levels of more-healthful items were relatively consistent or slightly better than what consumers expected. Therefore, for less-healthful items, the provision of nutrition information should disconfirm consumers' nutrition-related expectations resulting

in unfavorable attitudes and decreased purchase likelihoods. Consumers' perceptions regarding the likelihood of weight gain and heart disease risk should also be higher.¹⁴ Expectancy disconfirmation theory thus suggests that the discrepancy between expected and objective nutrient levels should result in an interaction between the provision of nutrition information and the healthfulness of the menu item. Negative disconfirmation for less-healthful items is expected to lead to decreases in measures of attitudes and purchase intentions and to increase choice preference for more-healthful items. In addition, these effects should generally be greater when both the number of calories and the nutrient levels are provided, compared with when calorie information (a single attribute) is presented alone.

Thus, we hypothesized that (1) when objective nutrition information is less favorable than consumers expect, providing nutrition information would have a greater negative influence on product attitudes and purchase intentions and a greater positive influence on perceived likelihood of weight gain and heart disease (hypothesis 3a); (2) when objective nutrition information is less favorable than consumers expect, providing *both* calorie and nutrient information would have the strongest influence (hypothesis 3b); and (3) providing nutrition information on menus would decrease choice preference for items with objective nutrition information that is less favorable than consumers expect and increase choice preference for items more consistent with expectations (hypothesis 4).

METHODS

Participants

Participants in a geographically dispersed area throughout a single south-central state responded to a mail survey. Participants were mailed packets that included 1 of the randomly assigned 6 menu stimuli, a survey including measures of interest, and a stamped self-return envelope. Completed surveys were returned by 241 respondents, a response rate of 50%. Almost all respondents were high-school graduates (97%), 63% were female, and ages ranged from 23 to 85 years. For the 6 groups in the design, cell sizes ranged from 38 to 42 participants.

Design

Study 2 had a 3 (nutrition information) \times 2 (daily value information) \times 4 (menu item) mixed experimental design. The nutrition information and daily value manipulations are between-subjects factors and menu item is a repeated-measure factor. Nutrient information conditions are: (1) calories, fat, saturated/trans fats, and sodium levels presented, (2) only calorie information presented, and (3) no nutrition information presented (status quo in most restaurants). (Note that most proposed legislation would require calorie-plus-nutrient information for restaurants that use menus, but only calorie information for fast-food restaurants with menu boards.) The daily value information disclosure is (1) daily value

TABLE 2—Means (SD) for Purchase Intentions and Product Evaluation—Dependent Variables for Nutrition Information—Provision Conditions

| Dependent Measures for Nutrition Information—Provision Conditions | Items Less Consistent With Nutrition Expectations | | Items More Consistent With Nutrition Expectations | |
|---|---|----------------------------|---|-----------------|
| | Chef's Salad | Hamburger and French Fries | Grilled Chicken Breast and Baked Potato | Turkey Sandwich |
| Product attitude | | | | |
| No nutrition information | 5.37 (1.8) | 4.46 (1.8) | 5.66 (1.4) | 5.25 (1.6) |
| Calories only | 5.18 (1.6) | 4.16 (1.9) | 5.80 (1.3) | 6.02 (1.4) |
| Calories and nutrients | 4.38 (1.9) | 3.72 (2.0) | 5.52 (1.5) | 5.64 (1.5) |
| Purchase intentions | | | | |
| No nutrition information | 4.92 (1.7) | 4.44 (2.1) | 5.59 (1.6) | 4.86 (1.9) |
| Calories only | 4.68 (1.7) | 3.80 (2.1) | 5.58 (1.6) | 5.86 (1.5) |
| Calories and nutrients | 3.97 (2.0) | 3.43 (2.1) | 5.55 (1.7) | 5.48 (1.7) |
| Perceived likelihood of weight gain | | | | |
| No nutrition information | 3.89 (2.0) | 7.24 (1.9) | 4.32 (1.9) | 3.75 (2.0) |
| Calories only | 4.71 (2.3) | 7.80 (1.8) | 4.43 (1.8) | 2.97 (1.7) |
| Calories and nutrients | 5.42 (2.3) | 7.53 (1.8) | 4.80 (1.7) | 3.72 (1.8) |
| Perceived likelihood of heart disease | | | | |
| No nutrition information | 4.05 (1.8) | 7.17 (1.6) | 3.97 (1.7) | 3.92 (1.9) |
| Calories only | 4.59 (2.1) | 7.62 (1.6) | 3.86 (1.8) | 3.10 (2.0) |
| Calories and nutrients | 5.42 (2.1) | 7.41 (1.5) | 4.23 (1.6) | 3.70 (1.9) |

recommendations for fat (65 g), saturated fat (20 g), and sodium (2400 mg) based on a 2000-calorie diet, and (2) a control condition without daily values.^{15,16} The nutrition information presented was based on laboratory tests of actual restaurant items. The provision of daily value information had no influence on the dependent measures and is therefore excluded from further discussion.

Four of the items included on the menu were deluxe hamburger with fries, chef's salad, chicken breast with baked potato, and turkey sandwich. As shown in Table 1, for the first 2 items, objective levels of calories, fat, and saturated fat exceeded consumers' expectations. For the latter 2, consumers' expectations were more consistent with objective levels. All information and manipulations were

TABLE 3—Effects on Purchase Intention and Product Evaluation—Dependent Variables

| | MANOVA Results | | Univariate F Values | | | |
|---|-----------------|--------|---------------------|---------------------|-------------------------|---------------------------|
| | Wilks λ | F | Product Attitude | Purchase Likelihood | Weight Gain Perceptions | Heart Disease Perceptions |
| Nutrition information | 0.93 | 1.9 | 4.2* | 2.9 | 4.2* | 3.5* |
| Daily value information | 0.98 | 1.2 | 2.9 | 0.9 | 0.0 | 0.7 |
| Item type | 0.40 | 60.0** | 56.6** | 47.9** | 218.4** | 231.8** |
| Nutrition information \times Item type | 0.91 | 2.5** | 4.0** | 5.2** | 4.8** | 4.6** |
| Nutrition information \times Daily value information | 0.94 | 1.8 | 2.2 | 1.4 | 0.4 | 0.1 |
| Daily value information \times Item type | 0.98 | 1.1 | 1.4 | 2.4 | 0.3 | 1.2 |
| Nutrition information \times Item type \times Daily value information | 0.97 | 0.9 | 2.0 | 1.1 | 0.9 | 0.9 |

Note: MANOVA = multivariate analysis of variance.

* $P < .05$; ** $P < .01$.

presented on a 4-color mock restaurant menu stimulus. Respondents were instructed to answer questions regarding the menu items; nutrition was not mentioned.

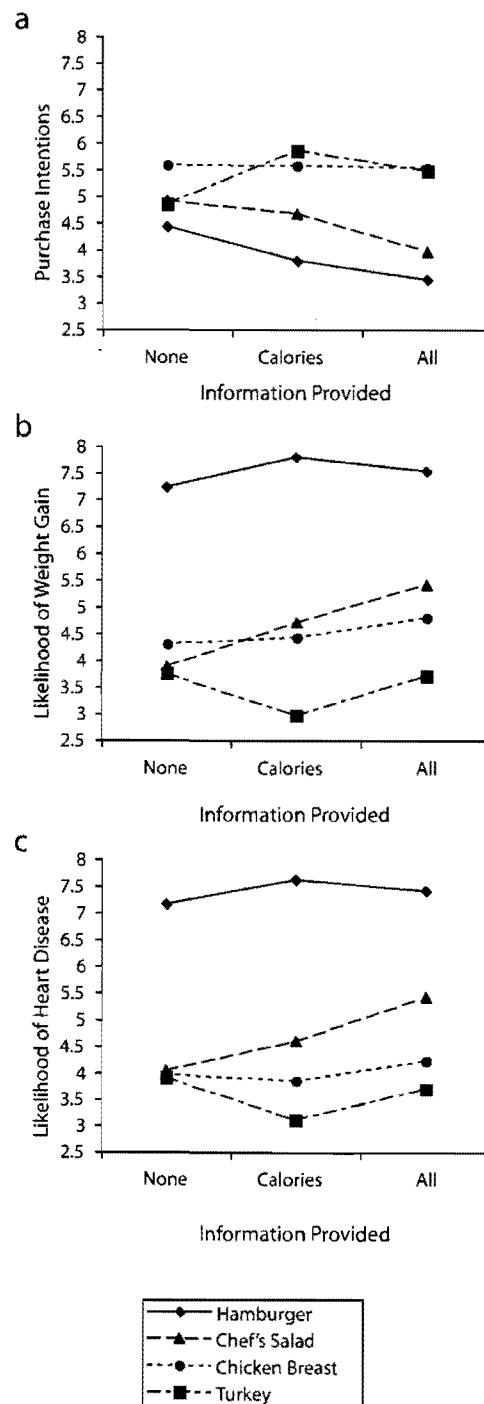
Measures

For each menu item, overall attitude toward the product and purchase intention were assessed using multi-item 7-point scales (all coefficient α 's greater than 0.90). To assess consumers' risk perceptions (likelihood of weight gain and heart disease perceptions), 9-point, single-item measures drawn from previous research were employed.^{14,17} (Specific items used for measures are available as a data supplement to the online article.) Items were recoded so that higher values indicated more-favorable attitudes and higher perceived risk. A single measure of choice among the 4 items was used ("If you had to choose one of the products described on the mock menu, which one product would you select?").

RESULTS

To test predictions, a doubly multivariate analysis was performed with SPSS 11.5 general linear models (SPSS Inc, Chicago, Ill). Dependent variable means are shown in Table 2 and multivariate and univariate results are shown in Table 3. There are main effects of nutrition information provision and menu item type for the dependent variables as hypothesized and a multivariate interaction between information provision and menu item ($P < .01$). Univariate interactions are significant for each of the 4 dependent variables. Plots of means relevant to interactions are shown in Figure 1. For the items inconsistent with nutrition expectations (hamburger and chef's salad), purchase intention means followed the predicted pattern. For the hamburger platter, follow-up contrasts showed that relative to the control ($M = 4.44$), there were significant decreases in purchase intentions for both the calories-plus-nutrients ($M = 3.43$; $t = -2.93$; $P < .01$) and calories-only ($M = 3.80$; $t = -1.89$; $P < .05$; 1-tailed test) conditions. The difference between the calorie-only and calorie-plus-nutrients conditions was not significant.

For the chef's salad, contrasts show that compared with the no-information control condition ($M = 4.92$), there was not a significant



Note. For the hamburger platter and chef's salad, consumers' calorie and nutrient expectations (assessed in study 1) generally were less consistent with objective levels than were the chicken breast dinner and turkey sandwich items.

FIGURE 1—Interaction between nutrition information provided and menu food item for purchase intentions (a), weight gain (b), and heart disease (c).

decrease in purchase intentions from the addition of calorie information ($M=4.68$). However, purchase intentions for the calories-plus-nutrient information condition ($M=3.97$) were significantly lower than both the control ($t=-3.18$; $P<.01$) and the calorie-only ($t=-2.41$; $P<.02$) conditions. This pattern is consistent with the nutritional composition of the chef's salad; it contains a moderate number of calories, but substantially exceeds the levels of fat and saturated fat expected by consumers. Thus, hypotheses 3a and 3b were supported.

With the provision of nutrition information, purchase intentions for the expectation-consistent items showed no effect in 1 case and a positive effect in the other case. Specifically, the purchase intentions means were flat for the chicken dinner (ranging between 5.55 and 5.59). For the turkey sandwich, relative to the control ($M=4.86$), the addition of calorie information ($M=5.86$; $t=3.68$; $P<.01$) and calorie-plus-nutrient information ($M=5.48$; $t=2.22$; $P<.05$) resulted in stronger purchase intentions.

Plots for the perceived likelihood of gaining weight and developing heart disease are shown in Figure 1b and 1c. For both variables, univariate analyses of variance were significant for the chef's salad ($P<.01$) and turkey sandwich ($P<.05$), but not significant for the hamburger platter or chicken dinner ($P>.15$). For the chef's salad, the calories-plus-nutrients condition led to higher perceived likelihoods of heart disease and weight gain, relative to the calories-only condition ($t=2.52$ and 1.87 , respectively; $P<.05$). For the turkey sandwich, calories alone decreased both perceived likelihoods ($P<.05$), but the full information did not differ relative to the control. (Presumably, the higher sodium levels revealed in the full-information condition counterbalanced the positive effects of a lower-than-anticipated calorie level.) The pattern of means is particularly interesting for heart disease. With no information, the means for all items except the hamburger platter were almost identical but the calorie and nutrient information widened perceived

differences among these items, and the chef's salad mean increased significantly ($P<.01$). These findings also supported Hypotheses 3a and 3b.

Consumers' item choices were examined across the 3 levels of nutrition information. Results were significant ($\chi^2=15.6$; $df=6$; $P<.02$). When calorie-plus-nutrient information was presented, the percentage of consumers choosing the turkey sandwich (which generally met or exceeded nutrition expectations) increased from 11% to 21%, and it decreased selection of items with higher levels of calories and fat than expected. The share of the chicken dinner (i.e., nutrient levels consistent with expectations) remained constant. In tests comparing the 2 items with higher calories and fat (i.e., items less consistent with expectations) to the 2 more-healthy items, selection of the higher-calorie, higher-fat items decreased from 37% to 24% ($P<.05$) when calorie and nutrition information were provided. These findings supported hypothesis 4.

DISCUSSION

As a response to the increased prevalence of overweight and obesity, which has been linked with the greater consumption of foods prepared outside the home,¹⁸ legislation has been proposed at both federal and state levels that would require the provision of nutrition information for restaurant food items. Study 1 results showed that, for a number of items, consumers vastly underestimated calories, fat, saturated fat, and sodium levels. On average, less-healthy items were underestimated by more than 600 calories and between one third to a full day's worth of the recommended values for fat and saturated fat. If diners consumed 600 more calories than they realized for just 1 restaurant meal per week, an extra 30 000 calories a year would be added to their diets. These unaccounted calories could cause a weight gain of approximately 9 pounds annually, holding all other factors constant. Over several years' time, this degree of misestimation could cause significant weight gain. Given substantial differences between expected and objective values,

these findings indicate that inclusion of nutrition information on menus offers informational benefits to consumers.

Study 2 findings showed that the addition of calorie and nutrient information for dinner house items influenced attitudes, intentions, and choices. Purchase intention and choice decreased for less-healthy items that were worse than expected (hamburger platter and chef's salad), whereas they remained constant or increased slightly for items more consistent with expectations. The largest changes occurred for the chef's salad, which had the largest deviations from consumer expectations. In the absence of nutrition information, the turkey, chicken, and chef's salad items were indistinguishable in terms of the perceived likelihood of heart disease. However, when calorie and nutrient information were provided, there was a larger difference in disease-risk perceptions.

Our findings have significant public health implications and provide support to the notion that new restaurant-oriented nutrition information initiatives may be warranted. However, circumstances unique to the restaurant industry, such as customized orders and

portion size differences, will make provision of exact nutrition information for every single meal and every consumer difficult. Legislation would probably need to apply to items "as offered for sale," and nutrition disclosure would not include customized orders or daily specials.

Because our results showed that consumers substantially underestimated calorie levels for less-healthy dinner house items and that preference for the less-healthy items diminished when nutrition information was disclosed, provision of nutrition information for chain restaurants' standard menu items would appear helpful. We also recognize that further research may identify additional nutrition formats that may be equally or more effective at conveying nutrition information, and that combining possible social marketing initiatives with future nutrition disclosure research seems warranted. In sum, these findings suggest that the provision of easily accessible nutrition information in restaurants may provide significant public health benefits by making it easier for consumers to make more healthy food choices. ■

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Contributors

S. Burton and E.H. Creyer originated the design of the studies and formulated the hypotheses. S. Burton wrote the first draft of the article and performed initial analyses. J. Kees and K. Huggins worked on data analyses and data collection. All authors participated in critical review and revision of the article based on reviewers' recommendations.

Human Participant Protection

This study was approved by the institutional review board of the University of Arkansas. Informed consent was obtained from study participants.

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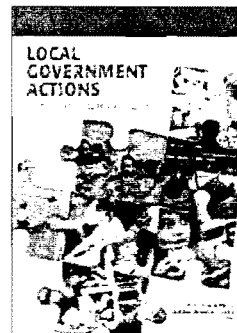
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LOCAL GOVERNMENT ACTIONS TO PREVENT CHILDHOOD OBESITY

In the United States, 16.3 percent of children and adolescents between the ages of two and 19 are obese. This epidemic has exploded over just three decades. Among children two to five years old, obesity prevalence increased from 5 percent to 12.4 percent; among children six to 11, it increased from 6.5 percent to 17 percent; and among adolescents 12 to 19 years old, it increased from 5 percent to 17.6 percent (see Figure 1).

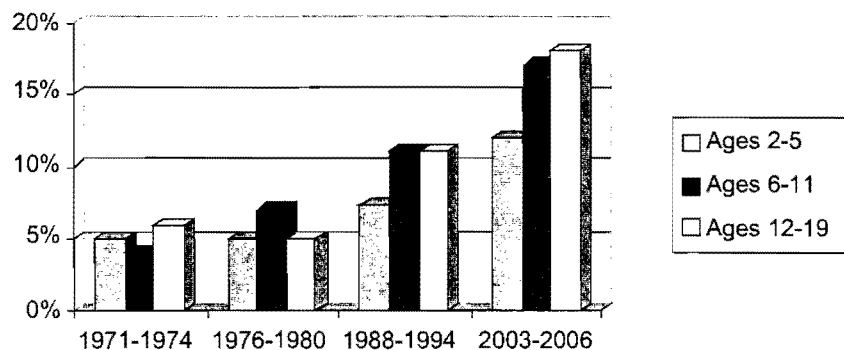
The prevalence of obesity is so high that it may reduce the life expectancy of today's generation of children and diminish the overall quality of their lives. Obese children and adolescents are more likely than their lower-weight counterparts to develop hypertension, high cholesterol, and type 2 diabetes when they are young, and they are more likely to be obese as adults.

In 2008, the Institute of Medicine (IOM) Committee on Childhood Obesity Prevention Actions for Local Governments was convened to identify promising ways to address this problem on what may well be the epidemic's frontlines. The good news is that there are numerous actions that show potential for use by local governments. Of course, parents and other adult caregivers play a fundamental role in teaching children about healthy behaviors, in modeling those behaviors, and in making decisions for children when needed. But those positive efforts can be undermined by local environments that are poorly suited to supporting healthy behaviors—and may even promote unhealthy behaviors. For example, many communities lack ready sources of healthy food choices, such as supermarkets and grocery stores. Or they may not provide safe places for children to walk or play. In such communities, even the most motivated child or adolescent may find it difficult to act in healthy ways.



... local governments are ideally positioned to promote behaviors that will help children and adolescents reach and maintain healthy weights.

FIGURE 1: PREVALENCE OF OBESITY AMONG CHILDREN, 1971-2006



SOURCE: Centers for Disease Control and Prevention, National Health and Nutrition Examination Survey



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ACTING LOCALLY

Local governments are experienced in promoting children's health, as they historically have implemented policies intended to ensure, among other things, that children are immunized or they wear helmets when riding a bike. In the same way, local governments—with jurisdiction over many aspects of land use, food marketing, community planning, transportation, health and nutrition programs, and other community issues—are ideally positioned to promote behaviors that will help children and adolescents reach and maintain healthy weights. Promoting children's healthy eating and activity will require the involvement of an array of government officials, including mayors and commissioners or other leaders of counties, cities, or townships. Many departments, including those responsible for public health, public works, transportation, parks and recreation, public safety, planning, economic development, and housing will also need to be involved.

In addition, community involvement and evaluation are vital to childhood obesity prevention efforts. It is critical for local government officials and staff to involve constituents in determining local needs and identifying top priorities. Engaging community members in the process will help identify local assets, focus resources, and improve implementation plans. And, as obesity prevention actions are implemented, they need to be evaluated in order to provide important information on what does and does not work.

CREATING EQUAL OPPORTUNITIES FOR HEALTHY WEIGHT

In adopting policies and practices tailored to raising healthy children, local communities have an added opportunity to achieve health equity—put simply, the fair distribution of health resources among all population groups, regardless of their social standing. Poverty, poor housing, racial segregation, lack of access to quality education, and limited access to health care contribute to the uneven well-being of some groups of people, especially those living in historically disadvantaged communities. If local officials observe, for example, that many children in certain neighborhoods do not engage in sufficient physical activity or consume too few fruits and vegetables, they should examine the equity of access to recreation opportunities and grocery stores in those areas. These officials may then find themselves uniquely positioned to catalyze, support, or lead collaborations in the community and engage diverse constituent groups in efforts to improve the places where children live and play.

RECOMMENDING PROMISING ACTIONS

Evidence on the best childhood obesity prevention practices is still accumulating and is limited in many important topic areas. However, local government officials want to act now on the best available information. The IOM committee reviewed published literature, examined reports from organizations that work with local governments, heard presentations from experts on the role of local government in obesity prevention, and explored a variety of tool kits that have been developed for communities and their leaders.

In arriving at its recommendations, the committee looked for actions that are within the jurisdiction of local governments; likely to directly affect children; based on the experience of local governments or sources that work with local governments; take place outside of the school day; and have the potential to promote healthy eating and adequate physical activity. Healthy eating is characterized as consuming the types and amounts of foods, nutrients, and calories recommended by the Dietary Guidelines for Americans, and adequate physical activity for children constitutes a total of 60 minutes per day.

The committee recommends nine healthy eating strategies and six physical activity strategies for local government officials to consider in planning, implementing, and refining childhood obesity prevention efforts. The committee also recommends a number of specific action steps for each strategy and highlights 12 steps overall judged to have the most promise.

ACTIONS FOR HEALTHY EATING

GOAL 1: IMPROVE ACCESS TO AND CONSUMPTION OF HEALTHY, SAFE, AND AFFORDABLE FOODS

Strategy 1: Retail Outlets

Increase community access to healthy foods through supermarkets, grocery stores, and convenience/corner stores.

Action Steps

- Create incentive programs to attract supermarkets and grocery stores to underserved neighborhoods (e.g., tax credits, grant and loan programs, small business/economic development programs, and other economic incentives).
- Realign bus routes or provide other transportation, such as mobile community vans or shuttles to ensure that residents can access supermarkets or grocery stores easily and affordably through public transportation.
- Create incentive programs to enable current small food store owners in underserved areas to carry healthier, affordable food items (e.g., grants or loans to purchase refrigeration equipment to store fruits, vegetables, and fat-free/low-fat dairy; free publicity; a city awards program; or linkages to wholesale distributors).
- Use zoning regulations to enable healthy food providers to locate in underserved neighborhoods (e.g., "as of right" and "conditional use permits").
- Enhance accessibility to grocery stores through public safety efforts, such as better outdoor lighting and police patrolling.

Strategy 2: Restaurants

Improve the availability and identification of healthful foods in restaurants.

Action Steps

- Require menu labeling in chain restaurants to provide consumers with calorie information on in-store menus and menu boards.
- Encourage non-chain restaurants to provide consumers with calorie information on in-store menus and menu boards.
- Offer incentives (e.g., recognition or endorsement) for restaurants that promote healthier options (for example, by increasing the offerings of healthier foods, serving age-appropriate portion sizes, or making the default standard options healthy – i.e., apples or carrots instead of French fries, and non-fat milk instead of soda in "kids' meals").

Strategy 3: Community Food Access

Promote efforts to provide fruits and vegetables in a variety of settings, such as farmers' markets, farm stands, mobile markets, community gardens, and youth-focused gardens.

Action Steps

- Encourage farmers markets to accept Special Supplemental Nutrition Program for Women, Infants and Children (WIC) food package vouchers and WIC Farmers Market Nutrition Program coupons; and encourage and make it possible for farmers markets to accept Supplemental Nutrition Assistance Program (or SNAP, formerly the Food Stamp Program) and WIC Program Electronic Benefit Transfer (EBT) cards by allocating funding for equipment that uses electronic methods of payment.
- Improve funding for outreach, education, and transportation to encourage use of farmers markets and farm stands by residents of lower-income neighborhoods, and by WIC and SNAP recipients.

- Introduce or modify land use policies/zoning regulations to promote, expand, and protect potential sites for community gardens and farmers' markets, such as vacant city-owned land or unused parking lots.
- Develop community-based group activities (e.g., community kitchens) that link procurement of affordable, healthy food with improving skills in purchasing and preparing food.

Strategy 4: Public Programs and Worksites

Ensure that publicly-run entities such as after-school programs, child-care facilities, recreation centers, and local government worksites implement policies and practices to promote healthy foods and beverages and reduce or eliminate the availability of calorie-dense, nutrient-poor foods.

Action Steps

- Mandate and implement strong nutrition standards for foods and beverages available in government-run or regulated after-school programs, recreation centers, parks, and child care facilities (which includes limiting access to calorie-dense, nutrient-poor foods).
- Ensure that local government agencies that operate cafeterias and vending options have strong nutrition standards in place wherever foods and beverages are sold or available.
- Provide incentives or subsidies to government run or regulated programs and localities that provide healthy foods at competitive prices and limit calorie-dense, nutrient poor foods (e.g., after-school programs that provide fruits or vegetables every day, and eliminate calorie-dense, nutrient poor foods in vending machines or as part of the program).

Strategy 5: Government Nutrition Programs

Increase participation in federal, state, and local government nutrition assistance programs (e.g., WIC, school breakfast and lunch, the Child and Adult Care Food Program [CACFP], the Afterschool Snacks Program, the Summer Food Service Program, SNAP).

Action Steps

- Put policies in place that require government-run and -regulated agencies responsible for administering nutrition assistance programs to collaborate across agencies and programs to increase enrollment and participation in these programs (i.e., WIC agencies should ensure that those who are eligible are also participating in SNAP, etc.)
- Ensure that child care and after-school program licensing agencies encourage utilization of the nutrition assistance programs and increase nutrition program enrollment (CACFP, Afterschool Snack Program, and the Summer Food Service Program).

Strategy 6: Breastfeeding

Encourage breastfeeding and promote breastfeeding-friendly communities.

Action Steps

- Adopt practices in city and county hospitals that are consistent with the Baby-Friendly Hospital Initiative USA (United Nations Children's Fund/World Health Organization). This initiative promotes, protects, and supports breastfeeding through ten steps to successful breastfeeding for hospitals.
- Permit breastfeeding in public places and rescind any laws or regulations that discourage or do not allow breastfeeding in public places and encourage the creation of lactation rooms in public places.
- Develop incentive programs to encourage government agencies to ensure breastfeeding-friendly worksites, including providing lactation rooms.
- Allocate funding to WIC clinics to acquire breast pumps to loan to participants.

Strategy 7: Drinking Water Access

Increase access to free, safe drinking water in public places to encourage water consumption instead of sugar-sweetened beverages.

Action Steps

- Require that plain water be available in local government-operated and administered outdoor areas and other public places and facilities.
- Adopt building codes to require access to and maintenance of fresh drinking water fountains (e.g., public restroom codes).

GOAL 2: REDUCE ACCESS TO AND CONSUMPTION OF CALORIE-DENSE, NUTRIENT-POOR FOODS

Strategy 8: Policies and Ordinances

Implement fiscal policies and local ordinances to discourage the consumption of calorie-dense, nutrient-poor foods and beverages (e.g., taxes, incentives, land use and zoning regulations).

Action Steps

- Implement a tax strategy to discourage consumption of foods and beverages that have minimal nutritional value, such as sugar-sweetened beverages.
- Adopt land use and zoning policies that restrict fast food establishments near school grounds and public playgrounds.
- Implement local ordinances to restrict mobile vending of calorie-dense, nutrient-poor foods near schools and public playgrounds.
- Implement zoning designed to limit the density of fast food establishments in residential communities.
- Eliminate advertising and marketing of calorie-dense, nutrient-poor foods and beverages near school grounds and public places frequently visited by youths.
- Create incentive and recognition programs to encourage grocery stores and convenience stores to reduce point-of-sale marketing of calorie-dense, nutrient-poor foods (i.e., promote "candy-free" check out aisles and spaces).

GOAL 3: RAISE AWARENESS ABOUT THE IMPORTANCE OF HEALTHY EATING TO PREVENT CHILDHOOD OBESITY

Strategy 9: Media and Social Marketing

Promote media and social marketing campaigns on healthy eating and childhood obesity prevention.

Action Steps

- Develop media campaigns, utilizing multiple channels (print, radio, internet, television, social networking, and other promotional materials) to promote healthy eating (and active living) using consistent messages.
- Design a media campaign that establishes community access to healthy foods as a health equity issue and reframes obesity as a consequence of environmental inequities and not just the result of poor personal choices.
- Develop counter-advertising media approaches against unhealthy products to reach youth as has been used in the tobacco and alcohol prevention fields.

ACTIONS FOR INCREASING PHYSICAL ACTIVITY

GOAL 1: ENCOURAGE PHYSICAL ACTIVITY

Strategy 1: Built Environment

Encourage walking and bicycling for transportation and recreation through improvements in the built environment.

Action Steps

- Adopt a pedestrian and bicycle master plan to develop a long-term vision for walking and bicycling in the community and guide implementation.
- Plan, build, and maintain a network of sidewalks and street crossings that creates a safe and comfortable walking environment and that connects to schools, parks, and other destinations.
- Plan, build, and retrofit streets so as to reduce vehicle speeds, accommodate bicyclists, and improve the walking environment.
- Plan, build, and maintain a well-connected network of off-street trails and paths for pedestrians and bicyclists.
- Increase destinations within walking and bicycling distance.
- Collaborate with school districts and developers to build new schools in locations central to residential areas and away from heavily trafficked roads.

Strategy 2: Programs for Walking and Biking

Promote programs that support walking and bicycling for transportation and recreation.

Action Steps

- Adopt community policing strategies that improve safety and security of streets, especially in higher crime neighborhoods. *
- Collaborate with schools to develop and implement a Safe Routes to School program to increase the number of children safely walking and bicycling to schools.
- Improve access to bicycles, helmets, and related equipment for lower-income families, for example, through subsidies or repair programs.
- Promote increased transit use through reduced fares for children, families, and students, and improved service to schools, parks, recreation centers, and other family destinations.
- Implement a traffic enforcement program to improve safety for pedestrians and bicyclists.

Strategy 3: Recreational Physical Activity

Promote other forms of recreational physical activity.

Action Steps

- Build and maintain parks and playgrounds that are safe and attractive for playing and in close proximity to residential areas.
- Adopt community policing strategies that improve safety and security for park use, especially in higher crime neighborhoods.*
- Improve access to public and private recreational facilities in communities with limited recreational options through reduced costs, increased operating hours, and development of culturally appropriate activities.

* These two action steps on community policing were combined for the most promising 12 action steps list.

- Create after-school activity programs, e.g., dance classes, city-sponsored sports, supervised play, and other publicly or privately supported active recreation.
- Collaborate with school districts and other organizations to establish joint use of facilities agreements allowing playing fields, playgrounds, and recreation centers to be used by community residents when schools are closed; if necessary, adopt regulatory and legislative policies to address liability issues that might block implementation.
- Create and promote youth athletic leagues and increase access to fields, with special emphasis on income and gender equity.
- Build and provide incentives to build recreation centers in neighborhoods.

Strategy 4: Routine Physical Activity

Promote policies that build physical activity into daily routines.

Action Steps

- Institute regulatory policies mandating minimum play space, physical equipment, and duration of play in preschool, after-school, and child-care programs.
- Develop worksite policies and practices that build physical activity into routines (for example, exercise breaks at a certain time of day and in meetings, or walking meetings). Target worksites with high percentages of youth employees and government-run and -regulated worksites.
- Create incentives for remote parking and drop-off zones and/or disincentives for nearby parking and drop-off zones at schools, public facilities, shopping malls, and other destinations.
- Improve stairway access and appeal, especially in places frequented by children.

GOAL 2: DECREASE SEDENTARY BEHAVIOR

Strategy 5: Screen Time

Promote policies that reduce sedentary screen time.

Action Steps

- Adopt regulatory policies limiting screen time in preschool and after-school programs.

GOAL 3: RAISE AWARENESS OF THE IMPORTANCE OF INCREASING PHYSICAL ACTIVITY

Strategy 6: Media and Social Marketing

Develop a social marketing program that emphasizes the multiple benefits for children and families of sustained physical activity.

Action Steps

- Develop media campaigns, utilizing multiple channels (print, radio, internet, television, other promotional materials) to promote physical activity using consistent messages.
- Design a media campaign that establishes physical activity as a health equity issue and reframes obesity as a consequence of environmental inequities and not just the result of poor personal choices.
- Develop counter-advertising media approaches against sedentary activity to reach youth as has been done in the tobacco and alcohol prevention fields.

FOR MORE INFORMATION . . .

Copies of *Local Government Actions to Prevent Childhood Obesity* are available from the National Academies Press, 500 Fifth Street, N.W., Lockbox 285, Washington, DC 20055; (800) 624-6242 or (202) 334-3313 (in the Washington metropolitan area); Internet, www.nap.edu. The full text of this report is available at www.nap.edu.

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The Washington Post

Chewing the Fat

The nation is moving toward full disclosure of calorie counts at fast-food chains -- but too slowly.

Saturday, July 25, 2009

YOU COULD, if desperate to increase your waist size, clog your arteries and double your chin, pay a visit to the Cheesecake Factory and order the fried macaroni and cheese. Though merely an appetizer, this dish packs 1,570 calories and 69 grams of saturated fat into four crunchy, deep-fried orbs about the size of golf balls, slathered with marinara sauce and topped with grated cheese. Then again, you could just stay home and swallow a stick of butter.

As the Center for Science in the Public Interest pointed out, you'd be better off eating the butter.

But how's a consumer to know? For unless you live in New York City, King County, Wash. (Seattle), or a handful of other, smaller localities around the country, most chain restaurants near you are not required to provide calorie or nutritional information.

That's starting to change, and none too soon. This month California started mandating that its chain restaurants -- about 17,000 locations statewide -- provide on-site brochures listing calories, sodium, saturated fat and carbohydrates for each menu item. In 18 months, chains in California will have to list calorie counts directly on menus or menu boards, so diners can see them at a glance.

Massachusetts and Maine are moving in the same direction, and similar measures have been introduced in at least a dozen other states. Faced with this tidal wave, the restaurant industry last month dropped its long-standing opposition to listing calorie counts on menus, and it is backing federal legislation that would standardize and nationalize what threatens to become a hodgepodge of slightly differing state and local mandates. That measure is tied to sweeping health-care reform legislation in the Senate, so unfortunately full disclosure of calorie counts, while all but inevitable, may have to wait.

Some will moan about a nanny state; the real question is whether the requirements will come too late. Obesity is a nationwide epidemic; in California, it's the second-deadliest cause of preventable death, after smoking, and a third of the state's children

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The Washington Post

Chewing the Fat

are overweight. Chain restaurants, both fast food and full service, are prime contributors. Meanwhile, portion sizes are ballooning and Americans are spending nearly half their food budgets at restaurants.

In New York City, which pioneered calorie disclosure on fast-food menus, a large majority of patrons, shocked at the numbers they saw on the menus, changed their orders to favor less fattening items. If more Americans were confronted with those numbers, it would lead to healthier diets and a less obese nation.

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Menu Labeling – The Cost to Restaurants

Half of large chain restaurants already have nutrition information and would not incur any new costs for analyzing their products.

Analysis Costs

Menu analysis software is readily available and not expensive.

- Software to estimate the caloric content of various products and meals is available for around \$500.

Dietitians can be hired to assist with software analysis.

- Though in-house restaurant staff could use menu analysis software, a company could hire a registered dietitian to calculate the nutrition information for its menu items.
- Dietitian rates vary depending on expertise and geography. Assuming a rate of \$100/hour and the time to do calculations for a menu with 50-100 items as between 40 and 80 hours, the one-time cost of calculating the caloric content of their menu items using this method would be between \$4,000 and \$8,000 (FDA, The Keystone Forum on Away-From-Home Foods, 2006, pp. 76-79).

Assistance for nutrition analysis is available from the National Restaurant Association.

- The National Restaurant Association is partnering with "Healthy Dining" to provide technical assistance to restaurants to help them provide nutrition information to customers through its "Ask Us" program. The cost to have one menu item analyzed is \$150. The price is reduced by 20% if the restaurant is a member of the state or national restaurant association (for more information contact Erica Bohm at 800-953-3463).

Laboratory analysis of restaurant menus.

- The average cost to have a product analyzed in a laboratory for calories is \$87.00 per menu item, while the average cost of analysing for calories, fats, sodium and carbohydrates is \$267 per menu item. With this in mind, a restaurant chain with 100 menu items would incur a *one-time* cost of approximately \$8,700 to have all its menu items tested for calories and \$26,700 to have all of its menu items tested for calories, fats, sodium and carbohydrates. (based on 2007 numbers)

Menu Redesign Costs

The cost of redesigning menus and menu boards would be modest.

- o Many chain restaurants centralize menu development and printing and restaurant headquarters, not local franchise owners, incur the costs. The phase-in period for menu labeling could be one year to allow restaurants to add calorie information the next time they already would be redesigning or reprinting their menus.

Labeling costs are within the range of other costs of doing business.

- o The cost of a dietitian to assist with menu analysis (\$4,000 to \$8,000) is about the same as that of a restaurant-grade range and oven (\$1,500 to \$6,300). The price for laboratory analysis (\$5,000 to \$10,000) is similar to that of a walk-in refrigerator (\$2,700 to \$12,600). Also, the nutrition analysis for menu labeling can be used by the entire chain of a restaurant, while each individual outlet needs to purchase its own refrigerator or oven.
- o When considered within the amount of revenue generated by chain restaurants each year and compared to the money spent by industry on advertising, the costs associated with menu labeling appear modest.

Estimated Cost for Nutrition Analysis for Chain Restaurants

| Restaurant | Number of Menu Items | Estimated Cost for Menu Analysis*** | Annual Sales for Restaurant | Advertising Expenditures, 2004 |
|--------------------|-----------------------------|--|------------------------------------|---------------------------------------|
| Cheesecake Factory | 214 | \$18,618 - \$57,138 | \$969 million | 0 |
| Chili's | 95 | \$8,265 - \$25,365 | \$3.7 billion* | \$99 million |
| Olive Garden | 72** | \$6,264 - \$19,224 | \$2.4 billion | \$98 million |
| Outback Steakhouse | 129 | \$11,223 - \$34,443 | \$258 million | \$60 million |
| Popeye's | 59 | \$5,133 - \$15,753 | \$1.5 billion | \$20 million |

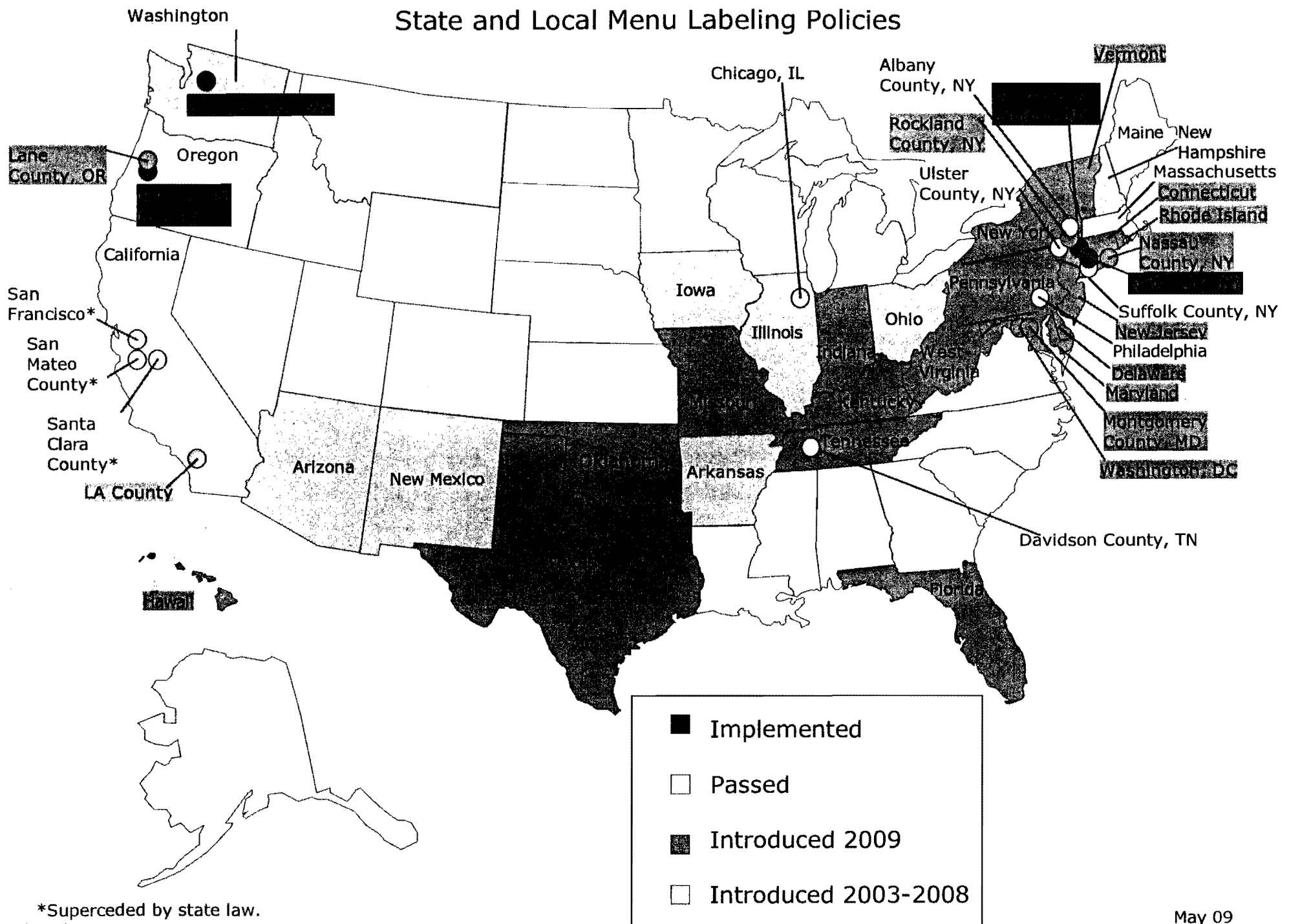
* Total revenue for Brinker International, Inc., which owns Chili's.

** Does not include alcoholic beverages.

*** Estimated cost range for calorie-only analysis and calorie, fats, sodium and carbohydrate analysis

*For more information, contact: Dr. Margo Wootan or Mia Dell, Esq.
Center for Science in the Public Interest, 202-777-8308, mdell@cspinet.org.*

State and Local Menu Labeling Policies



Nutrition Labeling in Chain Restaurants

State and Local Bills/Regulations – 2009-2010

Implemented

King County (Seattle), Washington

<http://www.metrokc.gov/health/>

Status: On July 19, 2007, the King County Board of Health adopted regulations to require nutrition disclosure on menus and menu boards at fast-food and other chain restaurants. In the Washington State Legislature's 2008 session, House Bill 3160, a bill that would have prohibited local boards of health from adopting restaurant labeling regulations, was passed out of the House of Representatives. The chair of the Commerce and Labor Committee urged the King County Department of Health to compromise with the Washington Restaurant Association (WRA) to avoid state legislation amending or preempting the King County menu labeling regulations.

As a result, the King County Board of Health and the WRA negotiated a set of amendments to the regulations, and the WRA requested that House Bill 3160 not be moved. On April 17, 2008 the King County Board of Health voted to amend their regulations. The negotiated regulations require nutrition disclosure at fast-food and other chain restaurants as of December 31, 2008. Labeling regulations for drive through menu boards go into effect August 1, 2009.

Summary: The regulations require chain restaurants with fifteen or more national locations and \$1 million in annual sales (collectively for the chain) to display calorie, saturated fat, sodium, and carbohydrate information for foods and beverages on menus (or approved methods at the point of ordering including menu inserts, menu appendices, supplemental menus, or electronic kiosks at each table, as long as the menu prominently states on each page the location and means by which nutrition information is provided). If the restaurant uses a menu board, calories must be posted on the board (or other approved, easily readable sign adjacent to the menu board and visible from the line prior to the point of ordering). The remaining nutrition information (saturated fat, sodium, and carbohydrates) must be provided in a plainly visible format at the point of ordering. Exemptions are provided for items on the menu for less than 90 days; unopened, prepackaged foods; foods in salad bars, buffet lines, cafeteria service, and other self serve arrangements; and food served by weight or custom-ordered quantity. Grocery and convenience stores are also exempt.

Multnomah County, OR

<http://www.co.multnomah.or.us/cc/>

Status: On July 31, 2008, the Multnomah County Board of Health passed a menu labeling measure (Order No. 08-114) four to one. The policy was reviewed by the Department of Health, which addressed the details of implementing the measure. The final regulations were adopted

February 12, 2009. The policy took effect March 12, 2009, and fines for restaurants that are found to be in violation will begin to be levied January 1, 2010.

Summary: This policy requires all chain restaurants with 15 or more outlets nationally to post calorie information on menus, menu boards, and food tags for standard menu items with additional nutrition information (saturated fat, trans fat, carbohydrates, and sodium) available upon request. Items that are offered for sale for 90 days or less and movie theaters are exempt.

New York City
www.nyc.gov/health

Status: On December 5, 2006, the Board of Health adopted regulations amending the Health Code (§81.50) to require menu labeling. The regulation was to become effective on July 1, 2007. The regulations were challenged in a lawsuit brought by the New York State Restaurant Association (NYSRA). On September 11, 2007, a federal judge in the United States District Court for the Southern District of New York held that the regulations were preempted by 21 U.S.C §343(r) because they applied only to restaurants that had voluntarily provided calorie information (voluntary claims in restaurants are regulated at the federal level), as opposed to simply requiring all chain restaurants to post calorie information, which would not be preempted.

The New York City Department of Health redrafted their menu labeling regulations and a revised §81.50 was adopted by the Board of Health on January 22, 2008. The New York State Restaurant Association brought another lawsuit challenging the new regulations. On April 16, 2008, the same federal judge for the U.S. District Court for the Southern District of New York upheld the New York City Board of Health regulations – ruling that the New York City menu labeling regulations are not preempted by federal law, nor do they infringe on restaurant's First Amendment rights. The NYSRA requested a stay to keep the City from enforcing the regulations until an appeal was heard. The judge denied that request on April 18, 2008. The Second Circuit Court of Appeals also denied the NYSRA motion for a stay on April 29, 2008. The Court of Appeals heard the NYSRA's appeal the week of June 9, 2008. They have not yet returned a ruling.

The New York City menu labeling regulations went into effect March 31, 2008; due to litigation, enforcement was delayed until May 5, 2008, and fines for noncompliant fast-food and chain restaurants began being issued starting July 19, 2008.

Summary: The regulations require food-service establishments, which are part of a chain of 15 or more restaurants nationally, to list calories for standard menu items on menu boards, menus, or food item display tags. Font and format used for calorie information must be at least as prominent in size as is used for the name or price of the menu item.

Westchester County, New York
<http://www.westchesterlegislators.com/index.htm>

Status: On January 22, 2008, the bill was introduced in the Westchester County Board of Legislators. The bill was referred to both the Legislation and Community Services Committees.

The measure passed out of both committees on September 22, 2008. The bill was passed on November 10, 2008 Westchester County Board of Legislators and enacted on November 13.

Summary: Chapter 708 requires chain food-service establishments with at least 15 locations anywhere to display calorie information on menu boards (including drive-thrus) and menus. With prior approval from the Westchester County Department of Health, chain food service establishments could use alternative means of making calorie information available to patrons, as long as the information is available at the point of purchase and is as prominent as menu labeling. The law will take effect 180 days after enactment (May 12, 2009).

Passed in to law

California

<http://www.leginfo.ca.gov/bilinfo.html>

SB1420: *Status:* Introduced February 21, 2008 by Senators Alex Padilla (D) and Carol Midgen (D), with Assembly Member Mark DeSaulnier (D) as principal coauthor. This bill is a reintroduction of SB120 which was vetoed by Governor Schwarzenegger in 2007. The bill was referred to the Senate Committee on Rules for assignment. Voted out of the Senate Committee on Health on March 27, 2008. Passed by the Senate by a vote of 21 to 17 on May 22, 2008. Referred to the Assembly. Voted out of the Assembly Committee on Health by a vote of 10 to 5 on June 17, 2008. Voted out of the Assembly Appropriations Committee by a vote of 12 to 4 on August 7, 2008. Passed by the Assembly by a vote of 46 to 28 on August 27, 2008. The amended bill then returned to the Senate where it was passed by a vote of 24 to 13 on August 31, 2008. Governor Schwarzenegger signed the bill on September 31, 2008.

The predecessor of this bill, SB120, was referred to the Senate Committee on Health on February 1, 2007, and voted out of that committee on March 14, 2007. Voted out of Senate Appropriations Committee on April 16, 2007. Passed by the Senate by a vote of 22 to 17 on May 31, 2007. Referred to the Assembly. Voted out of the Assembly Health Committee on June 26, 2007. Passed by the Assembly September 10, 2007 by a vote of 43 to 32. Vetoed by Governor Schwarzenegger on October 14, 2007.

Summary: This law requires fast-food and other chain restaurants that have 20 or more locations in California to post calorie information for all standard menu items on menus, menu boards, and food display tags. The policy allows for a range of nutritional information (minimum to maximum) for combo meals that have options and/or side orders. Calorie information may be provided per serving for family meals and family meal combos intended for more than one person (but not for appetizers or desserts). Nutrition information is not required at grocery stores, for items on the menu for less than 180 days, alcoholic beverages, or self-service items at salad bars or buffet lines. This law supersedes and replaces any existing or future local ordinances in California related to the provision of nutrition information in restaurants.

The law will be phased-in with full implementation by January 1, 2011. The first phase: from July 1, 2009 to December 31, 2010, restaurants must provide a brochure placed at the point of sale that includes at least calories, sodium, saturated fat, and carbohydrate information per

menu item. For sit-down restaurants, the information must be provided at the table. Drive-thrus are required to have brochures available upon request and have a notice of the availability at the point of sale. The second phase: By January 2, 2011, calories must be listed on menus, menu boards, and food display tags next to the menu item. Drive-thrus shall continue to have a brochure available upon request and must have a notice that the information is available.

Davidson County, TN
<http://health.nashville.gov/default.asp>

Status: Regulations were proposed in November 2008 by the Metropolitan Public Health Department. On November 6, 2008, the Metropolitan Board of Health held a public hearing to consider the proposed menu labeling regulations. After amending the regulations, the Board of Health invited additional public comment. On March 5, they voted 4-1 to approve the regulations.

Summary: The regulations require chain restaurants with at least fifteen locations nationally to display calorie information on menus, menu boards, and food tags. They exempt entertainment facilities, lodging establishments, alcoholic beverages, and any menu items that are on the menu for less than 90 days in a calendar year. Menu items can be labeled as more than one serving. The regulation will go into effect March 31, 2010.

Philadelphia
<http://www.phila.gov/citycouncil/index.html>

Status: On February 14, 2008, Councilmember Blondell Reynolds Brown introduced a menu labeling ordinance (No. 080167). The bill was voted out of the Committee on Public Health and Human Services on April 10, 2008. On November 6, 2008, the bill passed by a 12 to 5 vote. The Mayor signed the bill into law on November 20, 2008.

Summary: This bill amends the city's health code to require that calories, saturated fat, trans fat, sodium, and carbohydrates be displayed on menus and calories on menu boards and food tags in restaurants with 15 or more units nationally. If a restaurant serves food in wrappers or boxes, it must display the nutrition information on the wrapper or box in a clear and conspicuous manner. The law goes into effect on January 1, 2010 and sets a fine of \$500 for noncompliance.

San Francisco City and County
http://www.sfgov.org/site/bdsupvrs_index.asp

Status: On March 18, 2008, the San Francisco Board of Supervisors passed a menu labeling ordinance (File No. 071661, Ordinance No. 40-08) that requires nutrition disclosure on menus, food tags, and posters by July 22, 2008 and menu boards by September 20, 2008 at fast-food and other chain restaurants. This ordinance was superseded by state law signed on September 31, 2008.

Summary: This ordinance amended the city's health code to require that calories for standard menu items be displayed on menu boards and food tags and calories, saturated fat, carbohydrates, and sodium be displayed on menus in chain restaurants with twenty or more units in California. Items placed at the counter for general use, alcoholic beverages, and items that are on the menu for less than 30 days would have been exempt. This ordinance also would have required chain restaurants to provide calories, total fat, saturated fat, sodium, protein, fiber, cholesterol, and carbohydrates on posters that are readily visible to customers. Chain restaurants were required to report annually their nutrition information to the Department of Public Health, which would have made the information available to the public.

San Mateo County, CA

http://www.co.sanmateo.ca.us/smc/departement/bos/home/0,,1864_2133,00.html

Status: On August 12, 2008, the San Mateo County Board of Supervisors voted unanimously to adopt a menu labeling ordinance filed by Supervisors Jerry Hill and Rose Jacobs Gibson. Following the passage of the California state policy, this bill was repealed due to state level preemption.

Summary: This ordinance would have required chain restaurants in the unincorporated areas of the county with fifteen or more outlets in California to post calorie information on menu boards and food tags, and calories, saturated fat, trans fat, carbohydrates, and sodium on menus. The policy would have gone into effect on January 1, 2009.

Santa Clara County, CA

<http://www.sccgov.org/portal/site/bnc/>

Status: On December 4, 2007, Supervisor Liz Kniss recommended that the Administration and County Counsel draft a menu labeling ordinance. The draft ordinance was presented to the Health and Hospital Committee at its April 30, 2008 meeting. On June 3, 2008, the Santa Clara County Board of Supervisors unanimously passed a menu labeling ordinance, Ordinance No. NS-300.793. This ordinance has been superseded by state law signed on September 31, 2008.

Summary: This ordinance would have added Chapter XXII to the Santa Clara County Ordinance Code to require that calories for standard menu items be displayed on menu boards and food tags and that calories, saturated fat, trans fat, carbohydrates, and sodium be displayed on menus in chain restaurants (fourteen or more units in California) located within the unincorporated areas of the County. For restaurants that use menu boards or food tags, saturated fat, trans fat, carbohydrates, and sodium would have been provided in writing at the point of ordering. Items placed at the counter for general use, alcoholic beverages, and items that are on the menu for less than 30 days would have been exempt.

Suffolk County, NY
<http://www.co.suffolk.ny.us/legis/>

Resolution 2234-2008 Introduced in December 16, 2008 by Legislators D'Amato and Gregory.

Status: On January 29, 2009 the Health and Human Services Committee of the Suffolk County Legislature heard the Resolution and voted in favor. February 3, 2009 the full legislature held a public hearing and voted 17-1 to pass the Resolution.

Summary: The resolution requires the Commissioner of Health Services and the Board of Health to write and implement regulations to require that chain restaurants with 15 or more locations nationally post calorie content information for all regular menu items on menus and menu boards (including drive-thrus).

Ulster County, NY
<http://www.co.ulster.ny.us/legislature.html>

Local Law No. 1 of 2009 Introduced in January 2009 by Legislator Rob Parete.

Status: The Ulster County Menu Labeling Act passed out of the Health Services Committee on January 22, 2009 and was referred to the committee on Laws and Rules. A public hearing was held on March 4. The legislature voted 17-9 to pass the policy on April 7, 2009 and it was signed by the county executive on April 9, 2009.

Summary: This policy will require chain restaurants with 15 or more locations nationally to post calorie information for regular menu items on menus, menu boards (including drive-thrus), and food tags. The policy will take effect 180 days after adoption (October 5, 2009).

Introduced – Cities and Counties

Albany County, NY
<http://www.albanycounty.com/portal-government.asp>

Local Law No. "B" for 2009 Introduced on April 13, 2009 by County Legislators Nichols, Higgins, and Scavo.

Status: Referred to the Health Committee on April 13, 2009.

Summary: This policy would require chain restaurants with 10 or more locations nationally to post calorie information for regular menu items on menus, menu boards (including drive-thrus), and food tags. The policy would take effect 180 days after its filing with the Office of the Secretary of State

Lane County, OR

<http://www.co.lane.or.us/BCC/default.htm>

Order #04-1-2 is being considered by the Board of County Commissioners of Lane County, sitting as the Lane County Board of Health.

Status: First reading April 1, 2009. Second reading and public hearing on April 15.

Summary: This policy would require chain restaurants with 15 or more locations nationally to post calorie information for regular menu items (including alcohol and self-serve items, such as from salad bars or buffets) on menus, menu boards (including drive-thrus), and food tags. Additional information including saturated fat, trans fat, carbohydrates, and sodium must be available in writing (through a supplemental menu, menu insert, brochure, kiosk, or an alternative method approved by the Department of Health and Human Services) upon request. Items on the menu for less than 90 days per year, movie and other theatres, grocery stores, convenience stores, and bed and breakfasts are excluded. The rules would take effect on April 15, 2009, with fines going into effect December 31, 2009.

Rockland County, NY

www.co.rockland.ny.us/Legislature/default.html

Local Law No. 9435 for 2009 Introduced on March 26, 2009 by County Legislator Joseph Meyers.

Status: Referred to the in the Multi Services Committee on May 12, 2009.

Summary: This policy would require chain restaurants with 15 or more locations to post calorie information for regular menu items on menus and menu boards (including drive-thrus). The policy would take after filing with the Office of the Secretary of State.

Introduced – States

Connecticut

<http://www.cga.ct.gov>

SB 1080 Introduced on February 27, 2009 as a committee bill by the Committee on Public Health.

Status: Referred to Joint Committee on Public Health. A public hearing was held on March 6, 2009. Amended bill passed out of committee on March 26, 2009. The bill was then referred to the Legislative Commissioner's office for fiscal analysis on March 27, was reported out favorably on April 9, and placed on the Senate calendar.

Summary: This bill would require chain restaurants with 15 or more locations nationally to disclose calorie counts on menus and menu boards. Grocery stores and items on the menu for 30 days or less would be exempt. Menu labeling would be required by July 1, 2010.

Delaware

<http://legis.delaware.gov/LEGISLATURE.NSF>

Senate Bill 81 Introduced April 30, 2009 by Senator Sokola and Representative Kowalko, and cosponsored by Senators Hall-Long and Henry, and Representatives Hudson, Longhurst and Schooley.

Status: Assigned to the Senate Small Business Committee on Apr 30, 2009.

Summary: This bill would require a food-service establishment with 10 or more outlets in Delaware or nationally to post calories, saturated fat, carbohydrates, and sodium on menus (including carry out menus). Menu boards (including drive-thrus) and food tags could post only calories, with the additional nutrition information available upon request. Items on the menu for less than 30 days would be exempt. The bill would require the Division of Public Health to conduct an education campaign and an evaluation of menu labeling. The bill would go into effect one year after enactment.

Florida

<http://www.flsenate.gov>

S2590 Introduced on March 2, 2009 by Senator Gary Siplin (D).

Status: On March 12, the bill was referred to the Committees on Health Regulation, Regulated Industries, Judiciary, and General Government Appropriations. The first reading of the bill was on March 19, 2009.

Summary: This bill would require that chain restaurants with 19 or more locations in the state provide nutrition information on menus, menu boards, and food tags. Alcoholic beverages, buffets, salad bars, and items on the menu for less than 180 days per year would be exempt. If a menu item is intended to serve more than one person, it may list the number of individuals it is intended to serve and the calorie content for each individual serving. The policy would preempt localities from requiring nutrition information in restaurants. The policy includes two phases:

Phase I (January 1-June 30, 2010) – Restaurants with sit-down service must provide nutrition information for each standard menu item on menus, in a menu insert, or on a brochure or menu tent at each table. Restaurants that use a drive-thru or indoor menu board must provide information in a brochure that is available upon request at the point of sale with a notice indicating its availability. The nutrition information to be provided would include: calories, carbohydrates, saturated fat, and sodium.

Phase II (would go into effect July 1, 2010) – Restaurants must post calorie information adjacent to each menu item on menus, indoor menu boards, and food tags.

Hawaii

<http://www.capitol.hawaii.gov>

HB 5 Introduced January 22, 2009 by Representative K. Mark Takai (D).

Status: Referred to Committee on Health and Committee on Consumer Protection and Commerce.

Summary: This bill would require a food-service establishment with 15 or more outlets nationwide to post calorie information on menus, menu boards, and food tags. Alternatives to drive-thru menu boards would be allowed. Items on the menu for less than 30 days would be exempt. The bill would go into effect on July 1, 2009

Indiana

<http://www.in.gov/>

HB 1207 Introduced January 12, 2009 by Representative Charlie Brown.

Status: Referred to Committee on Public Health. On January 27, 2009, Committee gave a favorable report. At second reading, on February 2, 2009, the Committee made amendments to the bill. On Feb 25, 2009, passed the out of the full House by a vote of 51-46. Referred to the Senate. On March 3, 2009, referred to the Senate Committee on Commerce and Public Policy & Interstate Cooperation.

Summary: This bill would require chain restaurants of 20 or more outlets in Indiana to post calories and carbohydrates on menus and menu boards. Other information including calories, total fat, saturated fat, trans fat, cholesterol, sodium, carbohydrates, fiber, sugars, and protein must be made available to customers in the restaurant. The effective date would be July 1, 2009.

Kentucky

Website: <http://www.lrc.kv.gov/>

SB 133 Introduced February 12, 2009 by Senator Denise Harper Angel (D).

Status: Referred to the Senate Health and Welfare Committee on February 23, 2009.

Summary: The Consumer Menu Education and Labeling (CMEAL) Act would require chain restaurants with 10 or more locations in Kentucky to provide calorie information for menu items on menus or menu boards, including drive-thrus. Additional information including calories,

carbohydrates, saturated fat, and sodium must be made available to customers; the format for that information is not specified.

Maine

Website: <http://janus.state.me.us/legis/>

LD 1259 Introduced March 31, 2009 by Speaker Hannah Pingree.

Status: Referred to House Committee on Health and Human Services on March 31, 2009, and the Senate Committee on Health and Human Services on April 7, 2009.

Summary: LD 1259, an Act to Increase Access to Nutrition Information, would require restaurants that have 15 or more locations nationally to provide caloric information for standard menu items on menus, menu boards (including drive-thrus), or food tags. Grocery and convenience stores and menu items that are on the menu for 30 days or less per year would be exempt. The bill would go into effect on May 1, 2010.

Maryland

<http://mlis.state.md.us/>

HB 601 Introduced on February 6, 2009 by Delegate Doyle Niemann (D). Cosponsors are Ali, Benson, Carr, Frush, Glenn, Healey, Holmes, Hubbard, Hucker, Lafferty, Levi, Manno, Montgomery, Nathan-Pulliam, Pena-Melnyk, Ross, Shewell, Stein, V. Turner, and Weir.

Status: Referred to the Committee on Health and Government Operations. Public hearing was held on March 3, 2009. At the request of the Department of Health and Mental Hygiene, the bill was withdrawn for further study.

Summary: This bill would require chain restaurants with 15 or more outlets nationwide to post nutrition information for all standard menu items. Restaurants using printed menus would be required to list calories, carbohydrates, saturated plus trans fat, and sodium. Restaurants may list only calories on menu boards including on drive-thrus, food tags, and for salad bars, buffets and other foods on display, as long as the other nutrition information is provided in writing at the point of ordering. The Act would take effect October 1, 2010.

SB 142 Introduced on January 19, 2009 by Senator David Harrington (D).

Status: Referred to the Senate Finance Committee. Public hearing was held February 19, 2009.

Summary: Same as HB 601 (see above).

Massachusetts
<http://www.mass.gov/dph>

Proposed Regulations are being considered by the Massachusetts Department of Public Health.

Status: Regulations were proposed in January 2009. Public hearings were held on February 24 and 25.

Summary: The regulations would require chain restaurants with 15 or more locations nationally to list calories on menus, menu boards, and food tags. Items that are on the menu for less than 30 days would be exempt. Restaurants using drive-thru menus may post calories either on the menu board or on an adjacent stanchion visible at or prior to the point of ordering. The disclosure of calorie content values for a menu item that is intended to serve more than one individual could include the number of individuals intended to be served and the number of calories per individual serving. Alcoholic beverages may be labeled using average calorie values for beers, wines, and spirits.

Missouri
<http://www.moga.mo.gov/>

HB 755 Introduced on February 17, 2009 by Representative Jason Grill (D).

Status: Second reading on February 18, 2009.

Summary: This bill would require restaurants with 15 or more outlets nationwide to post calorie contents on menus, menu boards, and food tags for each standard menu item. Restaurants that use drive-thru menus may post calorie information on the menu board or on an adjacent stanchion visible at or prior to the point of ordering. Items on the menu for less than 30 days per year would be exempt.

New York
<http://assembly.state.ny.us/leg/>

AB 2720 Introduced January 21, 2009 by Assemblymember Ortiz. Cosponsors include Gottfried, Cook, P. Rivera, Mayersohn, Gabryszak, Koon, Galef, Christensen, Fields, Boyland. Multi-sponsors include Brennan, Clark, Dinowitz, Greene, Hooper, Jacobs, Lavine, Maisel, Pheffer, J. Rivera, Towns, and Weisenberg.

Status: Read once and referred to the Committee on Health. Passed out of the Health Committee on February 4, 2009 and referred to the Committee on Codes. Reported out of the Codes Committee on April 27. Advanced to third reading April 30, 2009.

Summary: This bill would require chain restaurants with 15 or more locations nationally and 5 or more locations in New York State to list calorie information for all standard menu items on

printed menus and menu boards or signs. Items on the menu for less than 30 days per year would be exempt. The Commissioner of Health is directed to promulgate regulations to implement the act. The bill would take effect 180 days after enactment.

S 5003 Introduced on April 27, 2009 by Senator Thomas Duane (D).

Status: Referred to the Senate Health Committee.

Summary: Same as AB 2720 (see above).

Oklahoma

<http://www.lsb.state.ok.us/>

SB 1135 Introduced February 2, 2009 by Senators Randy Bass and Constance Johnson.

Status: The bill was referred to the Health and Human Services committee on February 9, 2009 and reported Do Pass on February 19. On February 23, the bill was amended and renamed by the Health and Human Services committee and reported Do Pass. The amended bill passed the Senate by a vote of 37-8 on March 9, 2009. On March 10, the bill was engrossed to the House. Representative Wes Hilliard is the coauthor in the House.

Summary: Prior to being amended, the Healthy Choices Act would have required that chain restaurants with 10 or more locations in the state provide nutrition information on menus and menu boards. Grocery stores, convenience stores, drug stores, vending machines, alcoholic beverages, buffets, salad bars, and items on the menu for less than 180 days per year would be exempt. If a menu item is intended to serve more than one person, it could list the number of individuals it is intended to serve and the calorie content for each individual serving. The bill would preempt localities from requiring nutrition disclosures in restaurants. The policy included two phases:

Phase I (July 1, 2010-December 31, 2011) – Restaurants with sit-down service must provide calories, saturated fat, carbohydrates, and sodium content for each standard menu item on menus, in a menu insert, or on a brochure or menu tent on each table. Restaurants that use a drive-thru or indoor menu board must provide information in a brochure that is available upon request at the point of sale under a notice indicating its availability.

Phase II (would go into effect January 1, 2012) – Restaurants must post calorie content information adjacent to each standard menu item on menus, indoor menu boards, and food tags.

The amended bill would create a Task Force on Dining Information and Nutritional Education until November 30, 2009. The task force would be charged with examining the feasibility of providing nutrition information to consumers in restaurants and recommend any actions or legislation which it deems necessary or appropriate.

Oregon
<http://www.leg.state.or.us>

HB 2726 Introduced March 11, 2009 by Representatives Kotek and Greenlick and Senators Bates and Morrisette.

Status: The bill was referred to the Speaker's desk on February 17 and to the Human Services committee on February 19, 2009. A public hearing was held on March 13, 2009. The bill was amended and reported out of Committee by a vote of 5-4 on April 27, 2009.

Summary: This bill would require chain restaurants with 15 or more outlets nationwide to post the calorie content for each menu item on menus, menu boards (including drive-thrus), and food tags. Calorie information for self-serve items must be provided on a menu board or food tag. Chain restaurants also must have the following information for each menu item available to customers upon request in the restaurant: saturated fat, trans fat, carbohydrates, and sodium. Movie theaters and items offered for sale less than 90 days per year would be exempt. The Department of Health Services shall adopt rules for labeling alcoholic beverages. If a menu item, other than an appetizer or dessert, is intended to serve more than one person, the restaurant could list the number of individuals it is intended to serve and the calorie content for each individual serving. The bill would prevent localities from requiring nutrition disclosures in chain restaurants. The Department of Human Services shall adopt implementing regulations. The bill would go into full effect January 1, 2011.

Rhode Island
<http://www.rilin.state.ri.us/>

H 5520 Introduced on February 24, 2009 by Representatives McNamara and Naughton.

Status: The bill was referred to House Health, Education and Welfare Committee on February 24, 2009. A hearing was held on April 2, 2009. The Committee recommended that the measure be held for further study.

Summary: This bill would require chain restaurants with 15 or more outlets nationwide to post calorie information for each menu item on menus, menu boards (including drive-thrus), and food tags. Items on the menu for less than 30 days per year would be exempt. This policy would take effect on January 1, 2010.

S 0534 Introduced on February 25, 2009 by Senators Sosnowski, Perry, and Sheehan.

Status: The bill was referred to Senate Health and Human Services Committee. On April 22, 2009, a hearing was held to consider the bill. The Committee recommended that the measure be held for further study.

Summary: Same as H 5520 (see above).

Tennessee
<http://www.legislature.state.tn.us/>

HB 2319 Introduced on February 26, 2009 by Representative Michael Turner.

Status: On March 4, 2009 the bill was referred to the Committee on Health and Human Resources and the Committee on Government Operations. On March 11, 2009, it was referred to the Public Health and Family Assistance subcommittee of Health and Human Resources. On April 22, the bill was amended. On May 5, 2009, the bill was sent to a summer study committee by the Public Health and Family Assistance Subcommittee of Health and Human Resources.

Summary: The Tennessee Healthful Menu Act would require a chain restaurant of 20 or more establishments nationwide to disclose, for all standard menu items, the total number calories per serving as usually prepared and offered for sale. The disclosure must be on the menu board (including drive-thrus), a food tag, the menu, or an insert that accompanies the menu that is printed in the same font size as the menu. Additional nutrition information must be located on the premises and available to customers upon request prior to the point of ordering. For each standard menu item, that information must include: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and protein. Items on the menu for less than 90 days per year would be exempt. The policy would go into effect on January 1, 2010.

In subcommittee, the bill was amended to allow alternatives to labeling on menus and menu boards, including signs instead of menu boards and menu appendices or supplemental menus instead of labeling directly on the menu. Drive-thru menu boards and alcoholic beverages would be exempt. The amended state bill would overturn the menu labeling policy passed in Davidson County and prevent other localities from implementing policies regarding nutrition information in restaurants. The implementation date would be moved back to June 30, 2010.

SB 2314 Introduced on February 26, 2009 by Senator James F. Kyle.

Status: On March 2, 2009, the bill was referred to the Committee on General Welfare, Health and Human Resources.

Summary: Same as HB 2319 (see above).

Texas
<http://www.legis.state.tx.us/>

HB 1522 Introduced on February 19, 2009 by Representative Carol Alvarado.

Status: On March 2, 2009 the bill was referred to the Committee on Public Health and read for the first time.

Summary: This bill would require that chain restaurants with 19 or more locations in the state provide nutrition information on menus and menu boards. Grocery stores, alcoholic beverages, buffets, salad bars, and items on the menu for less than 180 days per year would be exempt. If a menu item is intended to serve more than one person, it may list the number of individuals it is intended to serve and the calorie content for each individual serving. The policy includes two phases:

Phase I (January 1-December 31, 2010) – Restaurants with sit-down service must provide nutrition information for each standard menu item on menus, in a menu insert, or on a brochure or menu tent at each table. Restaurants that use a drive-thru or indoor menu board must provide information in a brochure that is available upon request at the point of sale with a notice indicating its availability. The nutrition information to be provided would include: calories, carbohydrates, saturated fat, and sodium.

Phase II (would go into effect January 1, 2011) – Restaurants must post calorie information adjacent to each menu item on menus, indoor menu boards, and food tags.

Vermont

<http://www.leg.state.vt.us/>

H. 120 Introduced on February 3, 2009 by Representatives Koch, Browning, Clarkson, Devereux, Donahue, Emmons, Frank, Greshin, Hooper, Larocque, Lenex, Martin, McFaun, Reis, Stevens, Turner, and Zuckerman.

Status: On February 3, 2009, the bill was read for the first time and referred to the Committee on Human Services.

Summary: The bill would require restaurants with 10 or more establishments nationwide to post nutrition information next to each item as offered for sale. If a restaurant uses a printed menu, it must include calories, saturated fat, carbohydrates, protein, and sodium for each menu item. If a restaurant uses a menu board, it must post calories next to each item on the menu and have the additional nutrition information available in writing upon request. Grocery and convenience stores and items on the menu for less than 30 days per year would be exempt. The Department of Health would have 12 months from enactment of the bill to adopt rules to implement the policy.

West Virginia

<http://www.legis.state.wv.us/>

HB 2745 Introduced on February 23, 2009 by Delegates Perdue, Hatfield, Marshall, Michael, Moore, and Rodighiero.

Status: Upon introduction, the bill was referred to the Committee on Health and Human Resources, then to the Committee on Government Organization. On March 5, 2009, the Committee on Health and Human Resources reported the bill Do Pass and sent it to Government Organization.

Summary: The bill would create the Healthy Lifestyles Restaurant Calorie Posting Program. The program would require the Governor's Office of Health Enhancement and Lifestyle to propose rules for legislative approval that would require restaurants with 15 or more locations nationally to post calorie information on menus, menu boards, and food tags. The Office would write rules for labeling at or near drive-thru menu boards. All state agencies would be required to market the program to their members.

SB 419 Introduced on March 3, 2009 by Senators Foster, Jenkins, Prezioso, and Stollings.

Status: Upon introduction, the bill was referred to the Committee on Health and Human Resources. It passed out of the Committee on March 25, 2009 and was referred to the full Senate. On March 30, the bill was defeated in the Senate. Senator Deem filed a motion to have the bill reconsidered on March 31, 2009. A floor amendment was adopted that would exempt restaurants that are not located in at least 10 states other than West Virginia. The amended bill passed out of the Senate on March 31, 2009 and was referred to the House.

The bill was then amended by the House Committee on Health and Human Resources to eliminate the exemption for restaurants operating in less than 10 other states. It passed out of the Committee on April 3, 2009 and was referred to the House Committee on Government Organization. The Committee on Government Organization defeated the bill on April 7, 2009.

Summary: Same as HB 2745 (see above).

5/13/09

MENU LABELING POLL

fact sheet



What According to a new Field Research Corporation poll, 68 percent of Californians failed every question on a four-question fast food nutrition quiz. The quiz asked people to identify which items on common restaurant and fast food chain menus had the fewest calories, the least salt, the most fat or the most calories compared to other options. The poll also showed that 84 percent of Californians support requiring fast-food and chain restaurants to post nutritional information such as calorie counts on their menus and menu boards.

Why California is in the midst of a growing obesity epidemic. More than half of the state's adults are overweight, putting them at an elevated risk for chronic diseases like diabetes, heart disease, stroke and some cancers. Restaurants and fast-food outlets are a key concern because Americans consume about one-third of their calories at these establishments.

Who The poll was conducted by the Field Research Corporation and commissioned by the California Center for Public Health Advocacy.

When The study is based on telephone interviews completed March 20 - 31, 2007.

How The 523 individuals polled were drawn from telephone listings of individual voters selected from a random sample of all registered voters in the state of California.

Health Implications

- More than half of all California adults are obese or overweight.¹
- Overweight and obesity are serious health issues associated with increased risk of morbidity and mortality from chronic diseases.²

Eating Out

- Americans now spend over 46 percent of their food dollar away from home, compared with only 25 percent in 1955. That figure is expected to climb to 53 percent in 2010.³
- Americans consume about one-third of their calories from restaurants and other food-service establishments.⁴
- Food eaten away from home tends to be more calorie dense and nutritionally poorer than food prepared at home.⁵
- Almost half of adults patronize a restaurant on any given day⁶ and eat, on average, 218 restaurant meals each year.⁷

KEY FINDINGS

- Sixty-eight percent of Californians failed all four questions about the nutrition content of common fast-food menu items
- Only 10 percent of Californians can choose the menu item with the fewest calories, the least salt, the most fat or the most calories compared to other options
- Not a single respondent answered all four questions correctly
- Scores were equally poor regardless of education or income levels
- Eighty-four percent of Californians surveyed support requiring chain restaurants to post nutritional information on menus and menu boards

1. Centers for Disease Control and Prevention. "Overweight, by body mass index, Trends Data: California." <<http://apps.nccd.cdc.gov/brfss/Trends/trendchart.asp?qkey=10080&state=CA>> Accessed November 16, 2006.

2. Visscher T.L. and Seidell, J.C. The Public Health Impact of Obesity. *Annu Rev Public Health*, 2001, 22:355-375; and U.S. Department of Health and Human Services. "Overweight and Obesity: Health Consequences." Accessed November 29, 2006. <http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_consequences.htm>.

3. "2005 Fast Facts." California Restaurant Association. www.calrest.org.

4. Lin B, Guthrie J, Frazao E. Away-From-Home Foods Increasingly Important to Quality of American Diet. Washington, DC: U.S. Department of Agriculture, Economic Research Service, 1999. Agriculture Information Bulletin No. 749.

5. Stewart, Hayden, Blisard, Noel and Jolliffe, Dean. "Let's Eat Out. Americans Weigh Taste, Convenience, and Nutrition." U.S. Department of Agriculture Economic Research Service. October 2006. <http://www.ers.usda.gov/publications/eib19/>.

6. "Ad Age Almanac: Eating Out." *Advertising Age*. December 31, 2001, p. 22.

7. "Industry at a Glance." National Restaurant Association. Accessed at <http://www.restaurant.org/research/ind_glance.cfm> on April 12, 2002.

April 18, 2007



MENU LABELING POLL

nutrition quiz



Fast Food Nutrition Quiz

A new Field Research Corporation poll asked Californians to identify the low calorie, low salt, high fat or high calorie menu items from a list of four choices. Of people surveyed, 68 percent failed every question, and no more than 11 percent got any one question correct. Think you can do better?

1. (A) (B) (C) (D) Which of the following breakfast items that are served at Denny's do you think has the fewest calories?
A Ham and Cheddar Omelet
B Country Fried Steak and Eggs
C Three Slices of French Toast with Syrup and Margarine
D Three Pancakes with Syrup and Margarine
2. (A) (B) (C) (D) Which of the following items that are served at Chili's do you think has the least salt?
A Cajun Chicken Sandwich
B Classic Combo Steak & Chicken Fajitas
C Guiltless Chicken Platter
D Smoked Turkey Sandwich
3. (A) (B) (C) (D) Which of the following items that are served at Romano's Macaroni Grill do you think has the most fat?
A Traditional Lasagna
B Chicken Caesar Salad
C Pasta Classico with Sausage and Peppers
D BBQ Chicken Pizza
4. (A) (B) (C) (D) Which of the following items that are served at McDonald's do you think has the most calories?
A Two Big Macs
B Two Egg McMuffins
C One Large Chocolate Shake
D Four Regular Hamburgers

Answer Key: 1. (B) Country Fried Steak and Eggs (464 calories); 2. (A) Cajun Chicken Sandwich (2,220 mg sodium); 3. (B) Chicken Caesar Salad (69 g fat); 4. (C) One Large Chocolate Shake (1,160 calories).

For full information, visit <http://www.publichealthadvocacy.org/>

April 18, 2007



MENU LABELING POLL

poll results



PERCENTAGE OF RESPONDENTS ANSWERING CORRECTLY

Based on a survey of 523 registered California voters

| | |
|-----------------------------|--------|
| All four questions | 0 % |
| Three questions out of four | 0.8 % |
| Two questions out of four | 5.0 % |
| One question out of four | 26.6 % |
| No correct answers | 67.7 % |

QUESTION-BY-QUESTION BREAKDOWN

Which of the following breakfast items that are served at Denny's do you think has the **fewest calories**?

| | Percentage of Respondents Choosing Each Option |
|---|--|
| a. Ham and Cheddar Omelet (595 calories) | 36.2 % |
| b. Country Fried Steak and Eggs (464 calories) | 11.0 % |
| c. Three Slices of French Toast with Syrup and Margarine (1,003 calories) | 14.7 % |
| d. Three Pancakes with Syrup and Margarine (650 calories) | 28.5 % |
| e. Don't Know | 9.6 % |

Which of the following items that are served at Chili's do you think has the **least salt**?

| | Percentage of Respondents Choosing Each Option |
|---|--|
| a. Cajun Chicken Sandwich (2,220 mg) | 6.6 % |
| b. Classic Combo Steak & Chicken Fajitas (2,660 mg) | 7.6 % |
| c. Guiltless Chicken Platter (2,780 mg) | 24.9 % |
| d. Smoked Turkey Sandwich (2,920 mg) | 51.5 % |
| e. Don't Know | 9.4 % |

Which of the following items that are served at Romano's Macaroni Grill do you think has the **most fat**?

| | Percentage of Respondents Choosing Each Option |
|---|--|
| a. Traditional Lasagna (54 g) | 35.0 % |
| b. Chicken Caesar Salad (69 g) | 10.1 % |
| c. Pasta Classico with Sausage and Peppers (50 g) | 21.8 % |
| d. BBQ Chicken Pizza (24 g) | 26.2 % |
| e. Don't Know | 6.9 % |

Which of the following items that are served at McDonald's do you think has the **most calories**?

| | Percentage of Respondents Choosing Each Option |
|---|--|
| a. Two Big Macs (1,080 calories) | 53.0 % |
| b. Two Egg McMuffins (600 calories) | 8.4 % |
| c. One Large Chocolate Shake (1,160 calories) | 11.2 % |
| d. Four Regular Hamburgers (1,000 calories) | 22.1 % |
| e. Don't Know | 5.2 % |

April 18, 2007



MENU LABELING POLL

organization backgrounder



The California Center for Public Health Advocacy (CCPHA) raises awareness about critical public health issues and mobilizes communities to promote the establishment of effective health policies. Established in 1999 by California's two public health associations — Southern California Public Health Association and California Public Health Association-North — CCPHA is an independent, nonpartisan, nonprofit organization.

CCPHA uses tools of public health — epidemiological research, grassroots organizing, public and policymaker education, and partnership building — to design policy solutions that address California's public health challenges. CCPHA's strength lies in its unique approach of working simultaneously with facets of public health that are rarely combined.

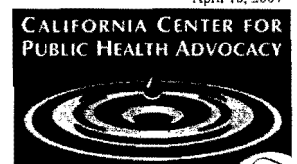
CCPHA focuses on three main policy strategies: physical education in public schools, expanding access to healthy food in communities and assuring implementation of school nutrition standards.

Building on the historic strength of California's two Public Health Associations CCPHA is active in the following areas:

- Analyzing and publicizing important health information. CCPHA develops policy reports to provide policy-makers and the general public with a picture of major public health problems affecting their communities;
- Supporting community advocates in promoting local reform. CCPHA mobilizes teams of community residents in legislative districts and provides advocacy training throughout the state;
- Informing advocates about state legislation. CCPHA tracks major bills in the state legislature that address nutrition and physical activity;
- Sponsoring and supporting legislation. CCPHA's legislative efforts focus primarily on instituting policy reforms to curtail the state's epidemic of childhood obesity.

CCPHA has received funding to promote nutrition and physical activity policy development from The California Endowment, the California Vitamin Cases Consumer Settlement Fund, the Robert Wood Johnson Foundation, the California Nutrition Network, The California Wellness Foundation, Kaiser Permanente, the William Randolph Hearst Foundations and donations from individuals and organizations that support their mission.

April 18, 2007



1 **SEC. __. NUTRITION LABELING OF STANDARD MENU ITEMS**
2 **AT CHAIN RESTAURANTS AND OF ARTICLES**
3 **OF FOOD SOLD FROM VENDING MACHINES.**

4 (a) **TECHNICAL AMENDMENTS.**—Section
5 403(q)(5)(A) of the Federal Food, Drug, and Cosmetic
6 Act (21 U.S.C. 343(q)(5)(A)) is amended—

7 (1) in subitem (i), by inserting at the beginning
8 “except as provided in clause (H)(ii)(III),”; and

9 (2) in subitem (ii), by inserting at the begin-
10 ning “except as provided in clause (H)(ii)(III),”.

11 (b) **LABELING REQUIREMENTS.**—Section 403(q)(5)
12 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
13 343(q)(5)) is amended by adding at the end the following:

14 “(H) **RESTAURANTS, RETAIL FOOD ESTABLISH-**
15 **MENTS, AND VENDING MACHINES.**—

16 “(i) **GENERAL REQUIREMENTS FOR RES-**
17 **TAURANTS AND SIMILAR RETAIL FOOD ESTABLISH-**
18 **MENTS.**—Except for food described in subclause
19 (vii), in the case of food that is a standard menu
20 item that is offered for sale in a restaurant or simi-
21 lar retail food establishment that is part of a chain
22 with 20 or more locations doing business under the
23 same name (regardless of the type of ownership of
24 the locations) and offering for sale substantially the

1 same menu items, the restaurant or similar retail
2 food establishment shall disclose the information de-
3 scribed in subclauses (ii) and (iii).

4 “(ii) INFORMATION REQUIRED TO BE DIS-
5 CLOSED BY RESTAURANTS AND RETAIL FOOD ES-
6 TABLISHMENTS.—Except as provided in subclause
7 (vii), the restaurant or similar retail food establish-
8 ment shall disclose in a clear and conspicuous man-
9 ner—

10 “(I)(aa) in a nutrient content disclosure
11 statement adjacent to the name of the standard
12 menu item, so as to be clearly associated with
13 the standard menu item, on the menu listing
14 the item for sale, the number of calories con-
15 tained in the standard menu item, as usually
16 prepared and offered for sale; and

17 “(bb) a succinct statement concerning sug-
18 gested daily caloric intake, as specified by the
19 Secretary by regulation and posted prominently
20 on the menu and designed to enable the public
21 to understand, in the context of a total daily
22 diet, the significance of the caloric information
23 that is provided on the menu;

24 “(II)(aa) in a nutrient content disclosure
25 statement adjacent to the name of the standard

1 menu item, so as to be clearly associated with
2 the standard menu item, on the menu board,
3 including a drive-through menu board, the
4 number of calories contained in the standard
5 menu item, as usually prepared and offered for
6 sale; and

7 “(bb) a succinct statement concerning sug-
8 gested daily caloric intake, as specified by the
9 Secretary by regulation and posted prominently
10 on the menu board, designed to enable the pub-
11 lic to understand, in the context of a total daily
12 diet, the significance of the nutrition informa-
13 tion that is provided on the menu board;

14 “(III) in a written form, available on the prem-
15 ises of the restaurant or similar retail establishment
16 and to the consumer upon request, the nutrition in-
17 formation required under clauses (C) and (D) of
18 subparagraph (1); and

19 “(IV) on the menu or menu board, a promi-
20 nent, clear, and conspicuous statement regarding the
21 availability of the information described in item
22 (III).

23 “(iii) SELF-SERVICE FOOD AND FOOD ON DIS-
24 PLAY.—Except as provided in subclause (vii), in the
25 case of food sold at a salad bar, buffet line, cafeteria

1 line, or similar self-service facility, and for self-serv-
2 ice beverages or food that is on display and that is
3 visible to customers, a restaurant or similar retail
4 food establishment shall place adjacent to each food
5 offered a sign that lists calories per displayed food
6 item or per serving.

7 “(iv) REASONABLE BASIS.—For the purposes of
8 this clause, a restaurant or similar retail food estab-
9 lishment shall have a reasonable basis for its nutri-
10 ent content disclosures, including nutrient databases,
11 cookbooks, laboratory analyses, and other reasonable
12 means, as described in section 101.10 of title 21,
13 Code of Federal Regulations (or any successor regu-
14 lation) or in a related guidance of the Food and
15 Drug Administration.

16 “(v) MENU VARIABILITY AND COMBINATION
17 MEALS.—The Secretary shall establish by regulation
18 standards for determining and disclosing the nutri-
19 ent content for standard menu items that come in
20 different flavors, varieties, or combinations, but
21 which are listed as a single menu item, such as soft
22 drinks, ice cream, pizza, doughnuts, or children’s
23 combination meals, through means determined by
24 the Secretary, including ranges, averages, or other
25 methods.

1 “(vi) ADDITIONAL INFORMATION.—If the Sec-
2 retary determines that a nutrient, other than a nu-
3 trient required under subelause (ii)(III), should be
4 disclosed for the purpose of providing information to
5 assist consumers in maintaining healthy dietary
6 practices, the Secretary may require, by regulation,
7 disclosure of such nutrient in the written form re-
8 quired under subelause (ii)(III).

9 “(vii) NONAPPLICABILITY TO CERTAIN FOOD.—

10 “(I) IN GENERAL.—Subclauses (i) through
11 (vi) do not apply to—

12 “(aa) items that are not listed on a
13 menu or menu board (such as condiments
14 and other items placed on the table or
15 counter for general use);

16 “(bb) daily specials, temporary menu
17 items appearing on the menu for less than
18 60 days per calendar year, or custom or-
19 ders; or

20 “(cc) such other food that is part of
21 a customary market test appearing on the
22 menu for less than 90 days, under terms
23 and conditions established by the Sec-
24 retary.

1 “(II) WRITTEN FORMS.—Subparagraph
2 (5)(C) shall apply to any regulations promul-
3 gated under subclauses (ii)(III) and (vi).

4 “(viii) VENDING MACHINES.—

5 “(I) IN GENERAL.—In the case of an arti-
6 cle of food sold from a vending machine that—

7 “(aa) does not permit a prospective
8 purchaser to examine the Nutrition Facts
9 Panel before purchasing the article or does
10 not otherwise provide visible nutrition in-
11 formation at the point of purchase; and

12 “(bb) is operated by a person who is
13 engaged in the business of owning or oper-
14 ating 20 or more vending machines,

15 the vending machine operator shall provide a
16 sign in close proximity to each article of food or
17 the selection button that includes a clear and
18 conspicuous statement disclosing the number of
19 calories contained in the article.

20 “(ix) VOLUNTARY PROVISION OF NUTRITION IN-
21 FORMATION.—

22 “(I) IN GENERAL.—An authorized official
23 of any restaurant or similar retail food estab-
24 lishment or vending machine operator not sub-
25 ject to the requirements of this clause may elect

1 to be subject to the requirements of such
2 clause, by registering biannually the name and
3 address of such restaurant or similar retail food
4 establishment or vending machine operator with
5 the Secretary, as specified by the Secretary by
6 regulation.

7 “(II) REGISTRATION.—Within 120 days of
8 enactment of this clause, the Secretary shall
9 publish a notice in the Federal Register speci-
10 fying the terms and conditions for implementa-
11 tion of item (I), pending promulgation of regu-
12 lations.

13 “(III) RULE OF CONSTRUCTION.—Nothing
14 in this subclause shall be construed to authorize
15 the Secretary to require an application, review,
16 or licensing process for any entity to register
17 with the Secretary, as described in such item.

18 “(x) REGULATIONS.—

19 “(I) PROPOSED REGULATION.—Not later
20 than 1 year after the date of enactment of this
21 clause, the Secretary shall promulgate proposed
22 regulations to carry out this clause.

23 “(II) CONTENTS.—In promulgating regula-
24 tions, the Secretary shall—

1 “(aa) consider standardization of rec-
2 ipes and methods of preparation, reason-
3 able variation in serving size and formula-
4 tion of menu items, space on menus and
5 menu boards, inadvertent human error,
6 training of food service workers, variations
7 in ingredients, and other factors, as the
8 Secretary determines; and

9 “(bb) specify the format and manner
10 of the nutrient content disclosure require-
11 ments under this subclause.

12 “(III) REPORTING.—The Secretary shall
13 submit to the Committee on Health, Education,
14 Labor, and Pensions of the Senate and the
15 Committee on Energy and Commerce of the
16 House of Representatives a quarterly report
17 that describes the Secretary’s progress toward
18 promulgating final regulations under this sub-
19 paragraph.

20 “(xi) DEFINITION.—In this clause, the term
21 ‘menu’ or ‘menu board’ means the primary writing
22 of the restaurant or other similar retail food estab-
23 lishment from which a consumer makes an order se-
24 lection.”

1 (c) NATIONAL UNIFORMITY.—Section 403A(a)(4) of
2 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
3 343-1(a)(4)) is amended by striking “except a require-
4 ment for nutrition labeling of food which is exempt under
5 subclause (i) or (ii) of section 403(q)(5)(A)” and inserting
6 “except that this paragraph does not apply to food that
7 is offered for sale in a restaurant or similar retail food
8 establishment that is not part of a chain with 20 or more
9 locations doing business under the same name (regardless
10 of the type of ownership of the locations) and offering for
11 sale substantially the same menu items unless such res-
12 taurant or similar retail food establishment complies with
13 the voluntary provision of nutrition information require-
14 ments under section 403(q)(5)(H)(ix)”.

15 (d) RULE OF CONSTRUCTION.—Nothing in the
16 amendments made by this section shall be construed—

17 (1) to preempt any provision of State or local
18 law, unless such provision establishes or continues
19 into effect nutrient content disclosures of the type
20 required under section 403(q)(5)(H) of the Federal
21 Food, Drug, and Cosmetic Act (as added by sub-
22 section (b)) and is expressly preempted under sub-
23 section (a)(4) of such section;

24 (2) to apply to any State or local requirement
25 respecting a statement in the labeling of food that

1 provides for a warning concerning the safety of the
2 food or component of the food; or

3 (3) except as provided in section
4 403(q)(5)(H)(ix) of the Federal Food, Drug, and
5 Cosmetic Act (as added by subsection (b)), to apply
6 to any restaurant or similar retail food establish-
7 ment other than a restaurant or similar retail food
8 establishment described in section 403(q)(5)(H)(i) of
9 such Act.

CSPI NEWSROOM

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Menu-Labeling Legislation Gains Support from Chain Restaurants

National Restaurant Association Joins CSPI in Support of Legislation Requiring Calories on Menus, Menu Boards

WASHINGTON—Legislation that would require calories on chain restaurant menus and menu boards now has the support of the restaurant industry as well as health groups thanks to an agreement struck among senators who were previously supporting separate labeling bills. Besides requiring calories on menus, menu boards and drive-through displays, the new legislation would require chains with 20 or more outlets to provide additional nutrition information upon request.

That language is included among other prevention measures in the draft health reform legislation released last night by the Senate Health, Education, Labor and Pensions (HELP) Committee. Senator Tom Harkin (D-IA), the lead sponsor of the Menu Education and Labeling (MEAL) Act that has been long supported by the Center for Science in the Public Interest and other health groups, brokered the agreement with Senators Tom Carper (D-DE) and Lisa Murkowski (R-AK), sponsors of a separate bill backed by industry.

"Calories on menus will allow Americans to exercise responsibility for what they eat and what they order for their children," said CSPI nutrition policy director Margo G. Wootan. "Whether you're concerned about managing your weight or about getting your money's worth at chain restaurants, calorie counts are critical pieces of information. We're delighted to be working with the restaurant industry on legislation that will ensure that calories be listed on their menus and menu boards"

If enacted, the compromise bill would cover all chains of 20 or more restaurants; small businesses would be exempt. Custom orders and temporary specials would be exempt from the calorie labeling requirement, as would items not listed on menus or menu boards, such as condiments. Like the Nutrition Labeling and Education Act that requires Nutrition Facts labeling on packaged foods, the legislation would require national uniformity.

Similar bills or regulations have been adopted in New York City, Philadelphia, Massachusetts, California and a number of major counties. This month bills in Oregon, Maine and Connecticut passed their state legislatures and are awaiting final action.

82 percent of those surveyed in New York City after its calorie-labeling rule went into effect said seeing calories on menus affected their choices. And Starbucks, Cosi and other restaurants have reformulated menu items to bring down the calories.

CSPI pointed out that companies are required to provide information on the fuel-efficiency of cars, care instructions for clothing, and energy and water consumption of certain home appliances.

"It seems more important that people be able to watch their calorie intake to avoid diabetes or heart disease than to know how to wash a blouse," said Wootan. "Putting calories on menu boards is a common-sense prevention measure that will help reduce Americans' risk of heart disease, diabetes

75



and other expensive-to-treat chronic diseases made more prevalent by rising obesity rates."

American adults and children consume, on average, one third of their calories from eating out. Studies link eating out with obesity and higher caloric intakes. For example, children eat almost twice as many calories when they eat a meal at a restaurant compared to a meal at home. Meals at chain restaurants can be unexpectedly high in calories, with appetizers, entrées and desserts sometimes providing an entire day's worth of calories on a single plate.



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FOR IMMEDIATE RELEASE
Wednesday, June 10, 2009

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National Restaurant Association Backs Bipartisan Senate Agreement To Empower Consumers Nationwide with More Nutrition Information

(Washington, D.C.) - The National Restaurant Association today released the following statement from President and CEO Dawn Sweeney about a bipartisan Senate agreement on a national nutrition information standard:

"Today, Senators Tom Harkin (D-Iowa), Tom Carper (D-Del.) and Lisa Murkowski (R-Alaska) announced an industry and consumer-backed agreement on a uniform national standard for chain restaurants that would provide consumers across the United States with a wide range of nutrition information at the point of purchase.

"We thank the Senators for their bipartisan leadership and for recognizing the importance of legislation that meets the needs of both the restaurant industry and our customers. We look forward to working with Congress to enact this legislation, which provides caloric information on the menu and additional information, such as sodium and carbohydrates, in other accessible formats.

"We know the importance of providing consumers with the information they want and need in a consistent format no matter where they are across the country. This legislation would replace varying state and local ordinances with a national standard that empowers consumers to make choices that are best for themselves and their families.

"The National Restaurant Association has led an industry-wide coalition that worked proactively with key stakeholders to provide a uniform approach that gives consumers one more way to live a healthy and active life."

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Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry, which is comprised of 945,000 restaurant and foodservice outlets and a work force of 13 million employees. Together with the National Restaurant Association Educational Foundation, the Association works to lead America's restaurant industry into a new era of prosperity, prominence, and participation, enhancing the quality of life for all we serve. For more information, visit our Web site at www.restaurant.org.



COUNCIL OF THE DISTRICT OF COLUMBIA
1350 PENNSYLVANIA AVENUE, N.W.
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September 18, 2007

TESTIMONY IN SUPPORT OF MENU LABELING LEGISLATION

I am very pleased to be able to testify on legislation that would require nutritional information for consumers in chain restaurants. You may know that I have introduced similar legislation in the District of Columbia. This is an important consumer and public health issue. The fact that now two major jurisdictions in the Washington region are considering this issue makes it more likely that this legislation will gain support.

I support menu labeling because nutritional intake correlates directly to one's health. Hardly a day goes by that there isn't news about the public health crisis of obesity. Over and over again, Americans are given the message to watch what they eat. And yet, how can they? How can one watch their calories if they can't count them? More important, how can one with high blood pressure watch their sodium intake – or one with diabetes watch their carbohydrate intake – if they are unable to get nutritional information?

What is wrong with providing nutritional information to consumers? Opponents promised doom and gloom, about 10 years ago, when Congress considered legislation requiring nutritional information on packaged foods. Today that's the norm, and widely accepted. Consumers are free to look, or ignore, the information. But at least it is there for them.

Increasingly, chain restaurants provide nutritional information – much more detailed than what you are considering – on their websites. To me it's amazing who is doing this: Baskin Robins Ice Cream, Kentucky Fried Chicken, and other high fat providers. So this legislation will not pry into information that isn't already being provided. Nor will this legislation demand analyses that aren't already being done.

But the problem with what is available today, is that it is not easily available to the consumer, and the point of decision.

Public officials love to talk about public education. But what is the point if the educational information is not available when choices are to be made?

This is why numerous public health and consumer organizations support menu labeling legislation. The AARP has included menu labeling in its national policy book: *"Federal and state policymakers should establish a reasonable requirement for nutrition labeling for restaurant foods. Such a requirement should apply only to restaurants and similar retail food establishments with mul-*

tiple outlets and to their standardized (or regular) menu offerings. The label should list key nutrition information (such as calories, saturated and trans fat, and sodium) on menus and menu boards."

Several years ago, former Surgeon General of the United States David Satcher wrote to the Council of the District of Columbia supporting legislation such as is now before you. He wrote in part:

"In my last year as Surgeon General of the United States I issued the *Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity*. Overweight and obesity may not be an infectious disease, but they have reached epidemic proportions in the United States. Overweight and obesity are increasing in both genders and among all population groups. Today there are nearly twice as many overweight children and almost three times as many overweight adolescents as there were in 1980. We are already seeing tragic results from these trends; left unabated obesity may soon cause as much preventable disease and death as cigarette smoking.

"I support Bill 15-387 because it is consistent with one of the first recommended actions of my 2001 *Call to Action*: 'Increase availability of nutrition information for foods eaten and prepared away from home.' Other measures such as increased public education about diet will be less active without interventions – such as menu information – that assist consumers when they make their choices in restaurants.

"Consumers will be better off – and healthier – if they have nutritional information on menus that enable them to make their personal choices based on informed decisions...."

The legislation before you is necessary to protect the public health. I thank Montgomery County for once again showing leadership in this area. And I thank you for allowing me to make these comments.

September 20, 2007

Chairperson Marilyn J. Praisner
Councilmember Phil Andrews
Councilmember Roger Berliner
Councilmember Marc Elrich
Councilmember Valerie Ervin
Councilmember Nancy Floreen
Councilmember Mike Knapp
Councilmember George Leventhal
Councilmember Duchy Trachtenberg
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Councilmember:

Thank you for considering the legislation introduced by Councilmembers Leventhal and Trachtenberg that would require fast food and other chain restaurants to provide calorie and other nutrition information on menus and calories on menu boards.

Listening to opponents of this legislation testify on Tuesday night, it would appear that there exists a legitimate debate as to how consumers behave when presented with nutrition information at point of purchase. This is a misrepresentation that ignores the strong support menu labeling has within the public health community and also the growing body of research that demonstrates the positive effect menu labeling has on the choices customers make in restaurants. I want to take this opportunity to address some of the points the Council heard from opponents of the legislation and also to explain the importance of presenting nutrition information on the menu.

Experts agree that restaurants should provide nutrition information at the point of ordering

Menu labeling has been recognized by many prominent health experts as an important strategy for addressing nutrition and obesity. The National Academies' Institute of Medicine recommends that restaurant chains "provide calorie content and other key nutrition information on menus and packaging that is prominently visible at point of choice and use."¹ The U.S. Surgeon General has called for "increasing availability of nutrition information for foods eaten and prepared away from home."² The Food and Drug Administration through the Keystone Forum on Away-From-Home Foods recommended that restaurants "provide consumers with calorie information in a standard format that is easily accessible and easy to use."³

A number of prominent national health organizations have endorsed menu labeling as a key strategy to address obesity and help people make healthier choices in restaurants, including the American Academy of Pediatrics, the American Medical Association, the American Heart

Association, AARP, the American Public Health Association, and the Society for Nutrition Education.

Public support for nutrition labeling on menus and menu boards is strong

Focus group research from the Food and Drug Administration suggests that, when asked, many consumers prefer more nutrition information, specifically calories, particularly on menu boards, and believe it would assist them in selecting “healthier food choices if and when they wanted to eat healthier.”^{4,5} This suggests that placing the information on the menu also intuitively makes sense to the average consumer. According to an industry-backed nationally representative poll, 83 percent of Americans support requiring restaurants to provide nutrition information, such as calories.⁶ In similar polls conducted in Connecticut and California, over 80% of people supported providing nutrition information on menus at restaurants.^{7,8}

Menu labeling is easier to find and use at the point of ordering than other approaches

Opponents of this legislation seem willing to provide nutrition information in a variety of formats: websites, brochures, on-package labeling, posters, and tray liners. Yet restaurants know providing information on menus is the most effective way of sharing information with their customers. Menu boards are what customers read while they are standing in line to place their orders and where they get virtually all of their information on what to order: listings of menu options, product descriptions, and price. Menu boards and menus are the most effective way to communicate information to customers. According to Hector Munoz of Burger King Corporation, “[t]he menu board is the single most valued piece of real estate in a Burger King restaurant. It is the most important way we communicate with our customers in the store about the products we offer and their price; it is what our customers look at, and it is what stimulates their decision to buy.”⁹

The Keystone Forum’s Report analyzes various options available to restaurants to provide nutrition information to its customers. Although websites are versatile, comprehensive, and interactive, they are only accessible to customers with internet access and require considerable forethought prior to going to a restaurant. Table mats or table tents, while also available at point of purchase and are perhaps more detailed than calories on a menu board, are not in the same place as the information customers are considering when choosing what to order, thus making it less likely to be viewed by customers while ordering. Putting nutrition information on tray liners and packaging does not present the information to the customer until the food has been ordered and served, regardless of how thorough and detailed that information is. Some restaurants provide electronic kiosks for customers to use prior to ordering. However this style of information-sharing requires additional time and effort from customers and does not present the information in a way that allows them to easily compare nutrition information between menu items or to compare price while considering the nutrition information.


And finally, posters and brochures that contain nutrition information are undependable, often difficult to read, and often not available at point of purchase. A 2005 study of McDonald’s restaurants in Washington, D.C. showed that 40 percent of the restaurants in the city did not have nutrition information for a majority of their menu items. Of the restaurants that did have some information, customers had to ask at least two employees to find it.¹⁰

This year, the New York City Board of Health conducted a survey of 274 restaurants that would have had to comply with their proposed menu labeling rule. Of the 11,865 customers interviewed in exit surveys, only 8% said they saw the nutrition information that was available in the restaurants.

Nutrition information is too important to relegate to hard-to-find pamphlets or kiosks, or tray liners or packaging which people don't get until after they order their food. It should be provided in the most useful manner, which is on the menu. For over thirty years, we have known that signs indicating the calorie content of available foods in a cafeteria setting can significantly decrease the number of calories that people purchase.¹¹ More recently, studies have specifically linked more healthful choices with calories placed directly on the menu.^{12,13}

Thank you again for considering this important public health legislation. If you have any questions please feel free to contact me.

Sincerely,



Margo G. Wootan, D.Sc.
Director of Nutrition Policy

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Menu Labeling Position Statement

"As an industry, we support disclosing nutrition information at chain restaurants. Our customers ask for it and we want to provide it. In fact, many chain restaurants already provide such information through product packaging, brochures, posters, kiosks and other formats available at the point of sale.

We believe that menu labeling laws and regulations are best handled at the federal level. For this reason, we will oppose all state and local menu labeling proposals and will focus our efforts on passing federal legislation during this Congress.

It is difficult for chain restaurants to comply with a growing patchwork of state and local menu labeling regulations. Furthermore, there is already a precedent for a federal approach to nutrition labeling for packaged foods. Imagine the logistical nightmare for food manufacturers if state and local jurisdictions had different regulations for packaged food labels. Chain restaurants and their customers deserve the same nationwide uniformity.

We strongly support bi-partisan, federal legislation that reflects a negotiated compromise between representatives from both sides of this debate. The *National Restaurant Association* (NRA) and the *Center for Science in the Public Interest* (CSPI) worked hard to reach a compromise that, if passed, would require restaurant chains with 20 or more locations nationwide (regardless of ownership) to display total calories next to each item on a menu board or printed menu. Additional nutrition information must be made available to customers upon request. Grocery stores, convenience stores, movie theaters, vending machine operators and other chain foodservice providers would also be required to comply. The federal legislation also allows appropriate time for drafting enforcement regulations and soliciting public/industry comment before all provisions of the legislation take full effect.

The *Restaurant Association of Maryland* strongly supports this compromise because it will allow chain restaurants to provide nutrition information to customers while ensuring nationwide uniformity, liability protection and flexibility in how additional nutrition information is provided. Another KEY part of the compromise is that it protects small businesses with fewer than 20 locations by allowing them to voluntarily comply with federal labeling rules, which means that they cannot be forced to comply with state and local regulations that apply to restaurants with fewer than 20 locations. Ultimately, federal menu labeling law would pre-empt all existing and new state or local labeling regulations for restaurants with 20 or more locations, and for restaurants with fewer than 20 locations that wish to voluntarily comply with federal law. This pre-emption becomes effective immediately upon enactment of the law.

Because successful federal legislation would require the Secretary of Health and Human Services to promulgate regulations, it is impossible for the County Council to craft legislation that mirrors federal rules that have yet to be created. The federal legislation defers to the

Secretary to develop regulations regarding menu statements concerning suggested daily calorie intake, standards for disclosing nutrient content for menu items that come in different flavors, varieties or combinations, and disclosure of additional nutrients beyond those covered in the law.

According to *Behavioral Risk Factor Surveillance Survey* data, Montgomery County has the lowest obesity rate statewide. With an obesity rate of only 16 percent, Montgomery County rates lower than the state of Colorado (17 percent), which is the slimmest state in the nation. We see no reason why Montgomery County needs to rush to pass this legislation before the federal legislation moves through Congress.

Despite the optimistic predictions of Washington insiders, the effects of the recession are far from over. Many businesses in our industry have yet to see their customer traffic or check averages return to pre-recession levels. Those businesses that have managed to keep their doors open have done so by reducing costs and finding new ways to attract customers.

According to data from the Maryland Comptroller, January through August restaurant sales in Montgomery County are down by \$11 million, or -1.1 percent, over the same period in the previous year. Normally, year over year sales increases average about 8 percent. The additional costs of nutritional analysis, designing and printing new menu boards and menus would be an unnecessary burden on individual franchisees before federal legislation takes effect.

According to the results of recent studies, New York City's menu labeling law has had mixed success. In one study, customers in poorer neighborhoods, where obesity rates are typically higher, actually consumed more calories than they consumed before the law took effect. In another citywide study, customers consumed just 106 fewer calories, on average. When asked about the dismal impact of the law on customer eating habits, a spokesperson for the New York City Department of Health said, 'dietary changes come slowly' and 'we were not expecting to see miracles.' It is highly unlikely that customer eating habits in Montgomery County would change any faster. Consequently, there is no reason to pass such legislation in Montgomery County before the federal legislation moves through Congress.

The federal menu labeling compromise legislation has been attached to both the House and Senate versions of healthcare reform bills. If healthcare reform does not pass Congress, we are confident that our bi-partisan menu labeling agreement can pass as part of food safety legislation or via another appropriate vehicle before the end of this Congress (December 2010)."

-end-

For your information, a summary of the federal menu labeling compromise is attached. We have also attached background articles from the New York Times.

PROPOSED MENU LABELING LAW

Requirements –

- Establishments in a chain of 20 or more locations under the same trade name
- Standard menu items offered for sale at least 60 days per calendar year
 - Does not include (e.g., condiments), daily specials, custom orders, and customary test marketing (i.e., on the menu less than 90 days).
- On menu, menu board or drive thru board –
 - Number of calories per standard menu item;
 - Succinct statement concerning suggested daily caloric intake; and
 - Referral statement regarding the availability of additional nutrition information.
- Additional written information available upon request includes –
 - Calories, calories from fat, total fat, saturated fat, cholesterol, sodium, carbohydrates, sugars, dietary fiber and protein. Also, FDA is expected to require trans fat.
- Implementation deadline to be set by regulations, probably 20 to 30 months from enactment

Voluntary Menu Labeling –

- Available to non-chain restaurants, as well as chain restaurants before mandatory program becomes effective
- Register with FDA and meet the mandatory program requirements
- Provides the same uniformity protection as the mandatory menu labeling program

Protections –

- Nutrition information determined by “reasonable basis” (e.g., nutrient databases, cookbooks, laboratory analyses, or other reasonable means).
- Regulations must consider “reasonable variation” in serving size and formulation of menu items
- National uniformity for nutrient content disclosures of the type chain restaurants would be required to provide.
 - Preempts all State and local menu labeling requirements in effect today
 - Protection from frivolous litigation over accuracy of nutrient content disclosures

Below is an overview of the negotiated agreement, including how key provisions compare to the LEAN Act (supported by the NRA) and the MEAL Act (supported by CSPI, opposed by the NRA):

National Uniformity

- **LEAN Act:** Would achieve a national, uniform standard by barring state and local governments from adopting any nutrition labeling requirements different from the federal requirements. This uniformity provision is based on the uniformity standards provided for packaged foods under the Nutrition Labeling and Education Act of 1990 (NLEA).
- **MEAL Act (opposed by NRA):** The industry-opposed MEAL Act offers no national uniformity standard. It would instead set a federal “floor” of nutrition-disclosure requirements and allow state and local governments to add additional requirements.
- **NEGOTIATED AGREEMENT:** The agreement follows the LEAN Act in that it provides uniformity for nutrition labeling in restaurants similar to that provided for packaged foods under the NLEA. It would bar state and local requirements for nutrition labeling of the type required under the negotiated agreement.

Liability Protection

- **LEAN Act:** Restaurants could use a “reasonable basis” to determine nutrition disclosure information. Reasonable basis would include the use of nutrient databases, cookbook analysis, laboratory analysis as well as additional means determined by the Food and Drug Administration.
- **MEAL Act:** Restaurants would be required to obtain a nutrient analysis, which could be interpreted to require a chemical analysis of menu items.
- **NEGOTIATED AGREEMENT:** Mirrors the language in the NRA-supported LEAN Act. This provision provides a defense against frivolous lawsuits on nutrient disclosure.

Small Business Protection

- **LEAN Act:** Independent restaurants and chains with fewer than 20 units under the same brand would be exempt from the requirements to disclose nutrition information. The LEAN Act would bar state and local nutrition labeling requirements for non-chain restaurants.
- **MEAL Act:** Independent restaurants and chains with fewer than 20 units under the same brand would be exempt from the requirements to disclose nutrition information. The measure would provide no incentive or protection for small business to voluntarily participate in the federal program.

- **NEGOTIATED AGREEMENT:** Would exempt restaurants with fewer than 20 units under the same brand from mandatory menu labeling and provides federal preemption of any state or local requirements that would otherwise apply to non-chain restaurants that voluntarily participate in the federal program.

Flexibility

- **LEAN Act:** Covered restaurants would be provided some degree of flexibility on how they disclose calories. Calorie disclosure could be on the menu/menu board, on a sign, on a separate insert in a menu, or a separate appendix to the menu. Additionally, restaurants would be required to make available upon request additional nutrition data in writing.
- **MEAL Act:** Covered restaurants **MUST** list calories, saturated fat plus trans fat, sodium and carbohydrates on the menu; no other means of disclosure are available. Calorie counts must be on the menu board.
- **NEGOTIATED AGREEMENT:** In the negotiated agreement, only calories must be listed on the menu/menu board for covered restaurants. Consistent with the LEAN Act, covered operations would be required to make additional nutrition information (e.g., fat, carbohydrates, sodium) available upon request. The calories-on-the-menu provision was a top priority for Sen. Harkin and critical to obtaining agreement on national uniformity, liability protection and small business protection.

October 6, 2009

Calorie Postings Don't Change Habits, Study Finds

By ANEMONA HARTOCOLLIS

A study of New York City's pioneering law on posting calories in restaurant chains suggests that when it comes to deciding what to order, people's stomachs are more powerful than their brains.

The study, by several professors at New York University and Yale, tracked customers at four fast-food chains — McDonald's, Wendy's, Burger King and Kentucky Fried Chicken — in poor neighborhoods of New York City where there are high rates of obesity.

It found that about half the customers noticed the calorie counts, which were prominently posted on menu boards. About 28 percent of those who noticed them said the information had influenced their ordering, and 9 out of 10 of those said they had made healthier choices as a result.

But when the researchers checked receipts afterward, they found that people had, in fact, ordered slightly more calories than the typical customer had before the labeling law went into effect, in July 2008.

The findings, to be published Tuesday in the online version of the journal Health Affairs come amid the spreading popularity of calorie-counting proposals as a way to improve public health across the country.

"I think it does show us that labels are not enough," Brian Elbel, an assistant professor at the New York University School of Medicine and the lead author of the study, said in an interview.

New York City was the first place in the country to require calorie posting, making it a test case for other jurisdictions. Since then, California, Seattle and other places have instituted similar rules.

Calorie posting has even entered the national health care reform debate, with a proposal in the Senate to require calorie counts on menus and menu boards in chain restaurants.

This study focused primarily on poor black and Hispanic fast-food customers in the South Bronx, central Brooklyn, Harlem, Washington Heights and the Rockaways in Queens, and used a similar population in Newark, which does not have a calorie posting law, as a control group. The locations were chosen because of a high proportion of obesity and diabetes among poor minority populations.

The researchers collected about 1,100 receipts, two weeks before the calorie posting law took effect and four weeks after. Customers were paid \$2 each to hand over their receipts.

For customers in New York City, orders had a mean of 846 calories after the labeling law took effect. Before the law took effect, it was 825 calories. In Newark, customers ordered about 825 calories before and after.

On Monday, customers at the McDonald's on 125th Street near St. Nicholas Avenue provided anecdotal support for the findings.

William Mitchell, from Rosedale, Queens, who was in Harlem for a job interview, ordered two cheeseburgers, about 600 calories total, for \$2.

When asked if he had checked the calories, he said: "It's just cheap, so I buy it. I'm looking for the cheapest meal I can."

Tameika Coates, 28, who works in the gift shop at St. Patrick's Cathedral, ordered a Big Mac, 540 calories, with a large fries, 500 calories, and a large Sprite, 310 calories.

"I don't really care too much," Ms. Coates said. "I know I shouldn't, 'cause I'm too big already," she added with a laugh.

April Matos, a 24-year-old family specialist, bought her 3-year-old son, Amari, a Happy Meal with chicken McNuggets, along with a Snack Wrap for herself. She said with a shrug that she had no interest in counting calories. "Life is short," she said, adding that she used to be a light eater. "I started eating everything now I'm pregnant."

Nutrition and public health experts said the findings showed how hard it was to change behavior, but they said it was not a reason to abandon calorie posting.

One advocate of calorie posting suggested that low-income people were more interested in price than calories.

“Nutrition is not the top concern of low-income people, who are probably the least amenable to calorie labeling,” said Michael F. Jacobson, executive director of the Center for Science in the Public Interest, a nonprofit health advocacy group in Washington.

New York City health officials said that because the study was conducted immediately after the law took effect, it might not have captured changes in people’s behavior that have taken hold more gradually.

A year ago, officials pointed out, the city began an advertising campaign telling subway riders that most adults should eat about 2,000 calories a day, which might put the calorie counts in context.

While the N.Y.U. study examined 1,100 restaurant receipts, the city is doing its own analysis of 12,000 restaurant receipts, which it plans to release in a few months, said Cathy Nonas, director of nutrition programs for the City Department of Health and Mental Hygiene.

People sometimes confuse intentions with actions, said Marie Roth, a registered dietitian with Blythedale Children’s Hospital in Valhalla, N.Y.

“Just by contemplating healthier choices, they feel like they could have done it and maybe they will the next time,” Ms. Roth said.

Jonathan Allen contributed reporting.

The New York Times

November 3, 2009

How Posted Calories Affect Food Orders

By RONI CARYN RABIN

Just a few weeks ago, independent researchers reported that New York City's ground-breaking calorie labeling law had had absolutely no effect on the caloric content of meals bought at chain restaurants in poor neighborhoods. Last week, city health officials delivered a more upbeat assessment, saying New Yorkers ordered fewer calories at four chains — Au Bon Pain, KFC, McDonald's and Starbucks — after the law went into effect last year.

The changes reported by the city health department's preliminary data were modest, indicating little change either way in the number of calories bought at 8 of 13 chains surveyed, and a significant increase in calories ordered at Subway, which researchers attributed to a continuing \$5 promotional special on footlong sandwiches that has tripled demand for them.

Although the findings of the two reports appear to contradict one another, researchers said differences in focus and size might explain the discrepancies.

The first study, published in the journal Health Affairs last month, assessed the effect of calorie labeling only in low-income, minority neighborhoods, while the larger health department study assessed the effect citywide.

"We looked at a population that's much more price sensitive, so calorie information could have taken a backseat to pricing in our group," said Brian Elbel, author of the earlier study and an assistant professor of medicine and health policy at New York University School of Medicine.

Since obesity rates tend to be higher in these neighborhoods, Dr. Elbel added, "this is where we would have liked to see an impact most."

The new city health department data are from a comparison of 10,965 purchases made at 13 chain restaurants in 275 locations in spring 2007, before the law went into effect, with 12,153 purchases made this past spring. Dr. Elbel's study examined only 1,156 purchases.

New York was the first city in the United States to require calorie content to be posted prominently next to prices in chain restaurants. Altogether, 16 states and localities have passed similar laws.

While the health department study found little change in the number of calories bought at most chain restaurants, researchers said the number of calories ordered over all at coffee shops declined by almost 10 percent, to an average of 237 in 2009 from an average of 260 in 2007, even though many people said they did not really notice or use the information.

In fact, only about 56 percent of chain restaurant customers said they noticed the posted calorie information, and even fewer, about 15 percent, said they took the calorie information into account when making their choices. Those 15 percent bought 106 fewer calories, on average, than consumers who said they had not seen or used the information, the study found.

“Dietary changes come slowly,” said Dr. Lynn Silver, an assistant commissioner in the city’s Department of Health and Mental Hygiene who presented the data from the study at a meeting of the Obesity Society in Washington. “We were not expecting to see miracles.”

Friday, Nov. 13, 2009

Counting calories

Rules requiring upfront disclosure by fast-food spots should be national

Montgomery County Council member George Leventhal's resurrected proposal to require that certain chain restaurants in the county post calorie information on their menus or menu boards is ill-timed, unnecessary local meddling.

His proposal, which went nowhere when it was introduced in 2007, would require chain restaurants that have more than 20 establishments nationwide to display calorie information on their menu boards and mandate that other information, such as fat and salt content, be available on request.

An estimated 640 eateries in Montgomery County would have to comply, but little, independent places wouldn't. The enforcers would be health department inspectors, who are already busy enough, and repeat violators could be shut down for three days.

Consumers have a right to nutritional information and the fast-food industry has been responding, largely without the threat of a government clubbing. Consumers have gotten smarter, more demanding.

Federal legislation that matches Leventhal's is attached to the health care reform legislation that passed the House of Representatives and is now before the Senate.

Few would argue that the intent of the menu-data mandate — better information for health-conscious consumers — is misguided. Heart disease is the No. 1 cause of death for men and women, according to the Centers for Disease Control.

That heart disease knows no geographical boundaries is why the matter is best left to federal regulations, similar to those that govern nutritional labeling for packaged foods.

Leventhal points out that waiting for a federal law to pass and be implemented could take as long as three years; if Montgomery County passed its own legislation, the law could be in place within a year. Sometimes being first isn't always the best approach.

It makes sense for restaurants in all states to have to comply with a single set of rules, not a patchwork of county-by-county or state standards. Going back to the packaged goods analogy, imagine the logistical nightmare if food manufacturers had to have different labels for multiple jurisdictions.

While federal health care reform may never pass, it's worth waiting just a couple of months to see what the Senate does with the bill. Federal labeling regulations can be extracted and considered separately. Nutritional data standards are best handled nationally and the fast-food industry has been responsive.

Mihill, Amanda

From: Lundy, Kevin [Kevin.Lundy@yum.com]
Sent: Thursday, October 29, 2009 3:02 PM
To: Mihill, Amanda
Subject: Information
Importance: High

Hi Amanda –

Great speaking with you and thanks for taking my call. Attached is some preliminary information for you. I will be getting more information over to you as well soon.

Attached is a 1 page primer as well as the most recent FDA opinion. Additionally, here is also a 1 pager on the other per serving menu labeling laws.

I am also reattaching our press release from last year on our announcement of which CSPI was a part of...

Also, please visit the following link on CSPI's statement commending passage of the California state law and their ask that this law be replicated elsewhere: <http://www.cspinet.com/new/200809301.html>

Finally, I am attaching a copy of the California Obesity Prevention Plan Study from 2006, which was a driving force to helping get the California law done. This study recommended (please refer to page 12) that restaurants post calories on a per serving basis. The below article as well highlights the Cancer Society's support as well.

Please keep in touch and let me know any feedback.

Thanks!

February 21, 2008

American Cancer Society Supports Menu Labeling Bill

From Ascribe Newsfeed:

One in three cancer deaths are caused by poor diet and obesity - a staggering statistic matched only by the number of cancer deaths related to tobacco.

We have seen the positive effects of education and outreach when it comes to tobacco use.

Yet millions of Californians who eat out remain in the dark about the nutritional information of their food.

For this reason, the American Cancer Society strongly supports the reintroduction of Senate Bill 1420, thanks its co-authors Sens.

This bill would require restaurant chains with 15 or more locations to post nutrition information on menu boards, and would play a crucial role in what must be a multi-pronged effort to combat this preventable disease.

In 2006, the California Department of Health Services created a strategic plan in response to this state crisis of obesity.

Among its recommendations: "Post calorie information per serving on all menus and menu boards at restaurants and encourage healthy food options on all menus."

We provide direct, immediate access to mainstream national media for 600 colleges, universities, medical centers, public-policy groups and other leading nonprofit organizations.

AScribe transmits news releases directly to newsroom computer systems and desktops of major media organizations via a supremely trusted channel - The Associated Press.

Amendment Backgrounder

- Added definition of “menu board” for continuity within the bill. Provided clarification for the non-application to marketing materials such as marquee signs and window clings.
- Clarified that compliance for menu items is 180 days rather than 30 days. We have found that 30 days offers operational challenges for our special offers. It also impacts various programs centering around religious observances such as Lent (40 days), etc. Other jurisdictions have offered a longer consideration (California for example 180 days).
- Clarified the non-application to salad bars and buffets. In many cases, items available for the buffet or salad bars will already have calorie information posted on the menu or menu board. In many cases buffet and salad bar items change frequently, thus creating a difficulty in posting information for offerings. In other jurisdictions with menu labeling including California, King County, Maine and Oregon, buffets and salad bars have been exempt.
- Clarified that the nutrient to be placed on the menu/menu board is calories. This mirrors all other menu labeling laws and the federal proposal. We will continue to be providing other nutrient information in our brochures.
- Clarified the process for posting for combo meal offerings.
- Clarified that the posting for family meals/meals intended to be consumed by more than one person shall be posted using the number of people intended to be served and the calories per serving. Both pieces of information would be posted.
- Clarified that this regulation does not create new private right of action claims against restaurants. Many jurisdictions (Maine, California, Oregon, etc) adopted this language to ensure that costly and impactful suits against restaurants do not materialize.

Bill No. 19-07
Concerning: Eating and Drinking
Establishments – Nutrition Labeling
Revised: 7/27/07 Draft No. 3
Introduced: July 31, 2007
Expires: February 28, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Leventhal and Trachtenberg

AN ACT to:

- (1) require certain eating and drinking establishments to post certain nutrition information on menu boards and menus; and
- (2) generally amend County law regarding eating and drinking establishments.

By adding

Montgomery County Code
Chapter 15, Eating and Drinking Establishments
Section 15-5A

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 15-15A is added as follows:

15-15A. Nutrition Labeling.

(a) Legislative Findings.

- (1) Research reveals the strong link between diet and health and that diet-related diseases begin early in life.
- (2) Increased caloric intake is a key factor contributing to the increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980. Data from the Maryland Behavioral Risk Factor Surveillance System indicated that 50.8 percent of Montgomery County residents were overweight or obese in 2005. According to the National Institutes of Health, obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders, and cancer. According to the Maryland Vital Statistics 2003 Annual Report, heart disease, cancer, stroke, and diabetes accounted for nearly 60 percent of all deaths in Maryland in 2003. The Report cites heart disease, cancer, stroke, and diabetes as the first, second, third, and fifth leading causes of deaths in Maryland in 2003. The United States Department of Health and Human Services cited that in 2000 the economic cost of obesity was \$117 billion in the United States.
- (3) The National Institutes of Health identified saturated fat as the biggest dietary cause of high low-density lipoprotein cholesterol. High LDL cholesterol levels lead to the build up of cholesterol in arteries; the higher the level of LDL in a person's blood, the

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greater the risk of heart disease. In the United States, heart disease is the leading cause of death and a leading cause of disability among working adults. The American Heart Association estimated that the economic cost of heart disease and stroke in the United States in 2007 will be \$431.8 billion in health care expenditures and lost productivity. The Maryland Behavioral Risk Factor Surveillance System indicated that nearly 34 percent of Maryland adults were diagnosed with high cholesterol in 2003. Overweight or obese adults were more likely to have high cholesterol than normal weight adults. The Maryland Vital Statistics 2003 Report cited heart disease as the leading cause of death in Maryland during 2003, which accounted for over 27 percent of all deaths.

(4) The National Institutes of Health identified that excess dietary sodium will contribute to high blood pressure in people who are sensitive to sodium. High blood pressure can lead to congestive heart failure, kidney failure, and stroke. Nearly 1 in 3 American adults have high blood pressure. The Maryland Behavioral Risk Factor Surveillance System indicated that approximately 25 percent of Maryland adults were diagnosed with high blood pressure in 2003. As with high cholesterol, obese adults were more likely to have high blood pressure than normal weight adults.

(5) Over the past 2 decades, there has been a significant increase in the number of meals prepared and eaten outside of the home. A study in the USDA Agriculture Information Bulletin reported that Americans consume approximately one-third of their calories on

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food purchased in eating and drinking establishments, and the National Restaurant Association estimated that Americans spend nearly 48 percent of total food dollars on food purchased from eating and drinking establishments. Studies in the USDA Agriculture Information Bulletin, the International Journal of Obesity, the American Journal of Public Health, and the American Journal of Epidemiology link eating out with obesity and higher caloric intake. Studies in the USDA Agriculture Information Bulletin and the American Journal of Epidemiology report that food from eating and drinking establishments is generally higher in calories and saturated fat and lower in nutrients, such as calcium and fiber, than home-prepared foods.

(6) The federal Nutrition Labeling and Education Act, in effect since 1994, requires nutrition labeling on packaged foods sold in retail stores. Using food labels is associated with healthier diets. The United States Department of Health and Human Services cited that three-quarters of American adults report using food labels on packaged foods, and a report from the Food and Drug Administration cited that 48 percent of people report that the nutrition information on food labels has caused them to change the food product they purchased.

(7) Nutrition information is required for food served in an eating and drinking establishment only if a nutrient content or health claim is made about the food. It is difficult for consumers to limit caloric intake at eating and drinking establishments because of the limited availability of nutrition information and the practice of serving food in larger-than-standard serving sizes. Studies in the

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Journal of Marketing and the American Journal of Clinical Nutrition show that people eat greater quantities of food when served more. A study in the Journal for Consumer Affairs indicated that people make healthier choices in eating and drinking establishments when provided with nutrition information at the point of purchase.

(b) Definitions. In this Section, the following words have the meaning indicated:

(1) "Menu" means a printed or handwritten list, provided at an eating and drinking establishment, of one or more food or drink items available at an eating and drinking establishment. A menu includes a beverage list, but does not include printed or pictorial materials for the purpose of marketing.

(2) "Menu board" means a posted list or pictorial display of food or beverage items offered for sale by a food facility. "Menu board" does not include printed or pictorial materials for the purpose of marketing.

(3) "Standardized Menu Item" or "Menu Item" means a food or drink item served in portions for which the size and content are standardized. "Standardized menu item" does not include a food or drink item that:

- (A) appears on the menu for less than 180 cumulative days per calendar year; or
- (B) is placed on a table or counter for general use without charge; or
- (C) is self-served in a salad bar or buffet.

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(c) Applicability. This Section applies to an eating or drinking establishment that is part of a chain with at least 10 locations nationally and that:

- (1) Does business under the same trade name, regardless of the ownership of individual locations; and
- (2) Offers predominantly the same type of menu.

(d) Labeling Required.

(1) An eating and drinking establishment must post calories for any standardized menu item on each menu or menu board next to or beneath the listing of that item in size and typeface that is clear and conspicuous.

(2) Range of Calorie Content Required for Different Flavors and Varieties. If an eating and drinking establishment offers a standardized menu item in more than one flavor or variety and lists the item as a single menu item, (such as beverages, ice cream, pizza, or doughnuts), the establishment must post the range of nutrition information for each size offered for sale. The range must include the minimum and maximum values for each flavor or variety of that item.

(3) The disclosure of calorie information on a menu or menu board next to a standardized menu item that is a combination of at least two standardized menu items on the menu or menu board, shall, based upon all possible combinations for that standardized menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories for

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- (A) number of calories;
- (B) grams of saturated fat; and
- (C) milligrams of sodium.

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Deleted: The required nutrition information must be located next to or beneath each menu item in a size and typeface at least as large as the name of the menu item or its price.

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calorie count information. If there is only one possible total amount of calories, then this total shall be disclosed.

- (4) The disclosure of calorie information on a menu or menu board next to a standardized menu item that is intended to serve more than one individual shall include both of the following:

7 (a) The number of individuals intended to be served by the standardized menu item.

9 (b) The calorie information per individual serving. If the standardized menu item is a combination of at least two standardized menu items, this disclosure shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories. If there is only one possible total amount of calories, then this total shall be disclosed.

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- (e) (1) The bottom of each menu page must contain the following statement:

Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium.

- (2) Each menu board must contain the following statement:

A 2,000 calorie daily diet is used as the basis for general nutrition advice; however, individual calorie needs may vary.

- (3) An eating and drinking establishment may include the following statement on a menu or menu board:

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Deleted: Menu Boards. If an eating and drinking establishment uses a menu board, the establishment may limit the nutrition information posted on the menu board to the number of calories per menu item. However, the establishment must provide the additional nutrition information required in subsection (d)(1) to each customer in writing on request.

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The nutrition information provided is based on standard recipes and product formulations. Small variations may occur because of differences in preparation, serving sizes, ingredients, or special orders.

(f) Enforcement. When an eating and drinking establishment is inspected under Section 15-3, the Director must verify that required nutrition information is posted. The Director is not required to verify the accuracy of the information provided, but may request the establishment to document its accuracy. This section may not be construed to create or enhance any claim, right of action or civil liability that did not exist under state law prior to the effective date of this subsection or limit any claim, right of action or civil liability that otherwise exists under state law. No private right of action arises out of this section. The only mechanism for enforcing this section is as provided in this subsection.

Sec. 2. Effective Date.

Section 15-15A, inserted by Section 1 of this Act takes effect on:

- (a) August 1, 2008 for any eating and drinking establishment that must comply with a similar menu labeling requirement in any other jurisdiction by August 1, 2008; and
- (b) August 1, 2009 for all other eating and drinking establishments.

Approved:

Marilyn J. Praisner, President, County Council

Date

Approved:

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Deleted: Substitute Ingredients. An establishment may use a substitute ingredient for any menu item for no more than 30 days without replacing the menu or menu board. However, if an establishment permanently substitutes an ingredient in any menu item, the establishment must comply with this Section within 90 days.

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**YUM! Brands Announced U.S. Divisions Will Place Calories on All Company Restaurant Menu Boards
Calls for Federal Legislation To Establish Uniform Menu Board Labeling**

LOUISVILLE, KY, October 1, 2008 – Yum! Brands, Inc. (NYSE:YUM) today announced that its U.S. divisions, Kentucky Fried Chicken, Taco Bell, Pizza Hut, Long John Silver's and A&W All-American Food, will become the first national restaurant chains to begin voluntarily placing product calorie information on their respective menu boards in company-owned restaurants nationwide. Franchisees will be encouraged to provide the same information on their menu boards. Calorie information will be based on individual serving sizes and will be phased onto menu boards beginning this year and completed by January 1, 2011. The Company also will call for federal legislation using the recently-enacted legislation in California as a model to establish uniform guidelines for menu board labeling with calorie information.

Each of the Company's brands currently offers lower calorie "Better For You" menu options (see attached list). Its Taco Bell restaurants offer a Fresco Menu, including nine items with nine grams of fat or less, many of which are lower calorie options. KFC currently offers lower calorie Sandwiches, Snackers, side items, salads and Tender Roast Chicken, and plans to introduce Kentucky Grilled Chicken early next year. Pizza Hut currently offers a number of lower calorie menu options, including Fit 'N Delicious lower fat pizzas, and will begin offering The Natural in December, a pizza made with all natural ingredients, including a multigrain crust, all natural old world sauce, all natural mozzarella cheese and natural toppings free from artificial colors, flavors or preservatives such as naturally-preserved Italian sausage, pepperoni without added nitrates and nitrites and 100% real beef with no fillers. Long John Silver's will begin offering a new Freshside Grille menu next month, which features grilled shrimp, salmon and tilapia, along with mixed vegetables and rice.

As part of a broader Health and Wellness effort across the United States, the Company also announced a new policy not to advertise its products on television programs specifically aimed at children under 12 years old. It also will continue to provide full nutritional information on its Web sites and in brochures, available upon request, at its restaurant drive-thru windows and in-store ordering counters. Additionally, the Company will launch national on-line exercise programs, featuring renowned University of Louisville men's basketball Coach Rick Pitino, to help educate consumers about maintaining a balanced lifestyle. In early 2007, both Taco Bell and KFC were pioneers in switching to cooking oils with zero grams trans fat per serving. Each of the company's brands is looking at ways to reduce sodium and making continuous improvements to the nutritional profile of its products.

"We believe we have a continued responsibility to offer "Better For You" options, educate consumers about the foods they eat, and promote exercise so they can maintain a balanced lifestyle," said Jonathan Blum, Yum! Brands chief public affairs officer. "Our customers have told us they would find calorie information useful, along with other nutritional information we make accessible in restaurant brochures and on our Web sites. We now call on the U.S. Congress to enact federal legislation that would create uniform menu board guidelines for all who sell prepared food so there is a consistent way to educate the public about the nutritional value of the food they eat."

The Center for Science in the Public Interest (CSPI) praised Yum! Brands for adding calorie counts to its menu boards. "Yum! Brands groundbreaking announcement that it will add calorie counts to the menu boards at KFC, Pizza Hut and Taco Bell is fabulous news for health-conscious consumers. Yum! is leaping ahead of all its competitors by providing the one piece of nutrition information that consumers most want. We applaud this move and encourage other major chains to follow this bold example. Yum! has gone an important step further by voicing its support for legislation that would require restaurants to list calories on menus and menu boards," added Michael Jacobson, CSPI executive director. "This announcement that calories will be displayed on menu boards deserves loud applause," said Walter Willett, chair of the Department of Nutrition at Harvard University's School of Public Health. "Yum! Brand's call for national legislation to create uniform menu board guidelines on nutrition is greatly appreciated. It is exactly the kind of industry leadership that we need."

The Company's restaurant brands currently offer Lower Calorie "Better for You" Menu Options, for example:

| <u>KFC Lower Calorie Options</u> (available nationally) | <u>Calories per Serving</u> |
|--|------------------------------------|
| KFC Snacker, Original Recipe® | 270 |
| KFC Snacker, Honey BBQ | 210 |
| HBBQ Dipping Wings (5) | 390 |
| Hot Wings (5) | 350 |

| | |
|---|-----|
| Chicken Breast, Original Recipe® (without skin) | 140 |
| Drumstick, Original Recipe® | 110 |
| Original Recipe® Strips (2) | 190 |
| Green Beans - side | 50 |
| Mashed Potatoes (without gravy) - side | 100 |
| Mashed Potatoes (with gravy) - side | 120 |
| Corn on the Cob (3") - side | 70 |

(available at participating restaurants)

| | |
|---|-----|
| Roasted Chicken BLT Salad with Fat Free ranch | 235 |
| Honey BBQ Sandwich | 300 |
| Tender Roast Twister (no sauce) | 340 |
| Tender Roast Sandwich (no sauce) | 290 |
| Tender Roast Toasted Wrap | 319 |

Taco Bell Lower Calorie Options
(available nationally)

Calories per Serving

| | |
|-----------------------------------|-----|
| Fresco Crunchy Taco | 150 |
| Fresco Grilled Steak Soft Taco | 160 |
| Fresco Ranchero Chicken Soft Taco | 170 |
| Crunchy Taco | 170 |
| Spicy Chicken Soft Taco | 170 |
| Fresco Soft Taco | 180 |
| Crunchy Taco Supreme® | 200 |
| Soft Taco Supreme® - Beef | 240 |
| Grilled Steak Soft Taco | 260 |
| Ranchero Chicken Soft Taco | 270 |
| Gordita Nacho Cheese – Steak | 270 |
| Gordita Supreme® -Steak | 270 |
| Gordita Supreme® -Chicken | 280 |
| Gordita Nacho Cheese -Chicken | 280 |
| Mexican Rice | 110 |
| Pintos 'n Cheese | 160 |

Pizza Hut Lower Calorie Options
(1 slice = 1/8 pizza)
(made to order upon request)

Per slice

| | |
|--|-----|
| 12" Medium Fit 'N Delicious Pizza | |
| - Diced Chicken, Red Onion, Green Pepper | 180 |
| - Ham, Pineapple & Diced Red Tomato | 160 |
| - Green Pepper, Red Onion & Diced Red Tomato | 150 |
| 14" Large Fit 'N Delicious Pizza | |
| - Diced Chicken, Red Onion, Green Pepper | 250 |

| | |
|--|-----|
| - Ham, Pineapple and Diced Red Tomato | 230 |
| - Green Pepper, Red Onion & Diced Red Tomato | 210 |

12" Medium Thin 'N Crispy Pizza

| | |
|-------------------------------------|-----|
| - Green Pepper, Red Onion & Tomato | 180 |
| - Chicken, Red Onion & Green Pepper | 190 |
| - Ham, Pineapple & Diced Tomato | 180 |

14" Large Thin 'N Crispy Pizza

| | |
|--|-----|
| - Cheese Only | 260 |
| - Green Pepper, Red Onion & Diced Tomato | 250 |
| - Chicken, Red Onion, & Green Pepper | 270 |
| - Ham, Pineapple & Diced Tomato | 260 |
| - Pepperoni & Mushroom | 270 |

12" Medium Hand Tossed

| | |
|---------------------|-----|
| - Cheese Only | 220 |
| - Pepperoni | 220 |
| - Ham and Pineapple | 210 |
| - Veggie Lover's | 200 |

Long John Silver's Lower Calorie Menu Options
(available nationally)

Calories per Serving

| | |
|---|----------|
| Battered Fish | 230 |
| Baked Cod | 120 |
| Battered Shrimp | 45/each |
| Giant Shrimp | 90/each |
| Chicken Plank | 140 |
| Shrimp & Seafood Salad (without dressing) | 260 |
| Lite Italian Dressing | 20 |
| Hushpuppies – side | 60/each |
| Lobster Stuffed Crab Cake | 170/each |
| Corn Coblette – side | 90 |
| Cheesesticks | 140 |
| Rice | 180 |

A&W All-American Food Lower Calorie Menu Options
(available nationally)

| | |
|--------------------------|-----|
| 1/4 lb. Hamburger | 460 |
| Grilled Chicken Sandwich | 430 |
| Hot Dog (plain) | 260 |
| Coney (Chili) Dog | 310 |
| Coney (Chili)/Cheese Dog | 350 |

A b-roll package is available via satellite at the following times and coordinates:

| | | |
|--------------------------|----------------------------|-----------------------------------|
| WEDNESDAY, OCT. 1 | 11:00 – 11:15 AM ET | Galaxy 3C, Tr. 4, DL 3780V |
| | 2:15 – 2:30 PM ET | Galaxy 3C, Tr. 4, DL 3780V |
| THURSDAY, OCT. 2 | 4:00 – 4:15 AM ET | AMC 3, Tr. 8, DL 3860V |

Technical Info DURING FEED ONLY, NBN TOC, 212 - 684 - 8910, ext. 221

The b-roll package is also available via Pathfire: Story # NBN 25582

Instructions: For DMG -- from the navigation panel on the left, select News, Video News Feeds, (NBN). For Browser DMG -- login, click the Provider Directory, and select News Broadcast Network (NBN). This story will be available on Pathfire as of 11:00 AM ET on Wednesday, October 1, 2008.

Yum! Brands, Inc., based in Louisville, Kentucky, is the world's largest restaurant company in terms of system restaurants, with nearly 36,000 restaurants in over 100 countries and territories. The company is ranked #253 on the Fortune 500 List, with revenues in excess of \$10 billion in 2007. Four of the company's restaurant brands – KFC, Pizza Hut, Taco Bell and Long John Silver's – are the global leaders of the chicken, pizza, Mexican-style food and quick-service seafood categories, respectively. Outside the United States, the Yum! Brands system opened about four new restaurants each day of the year, making it the largest retail developer in the world. The company has consistently been recognized for its reward and recognition culture, diversity leadership, community giving, and consistent shareholder returns. Since its spin-off as a publicly traded company in 1997, its stock has quintupled. Last year, the company launched the world's largest private sector hunger relief effort, in partnership with the United Nations World Food Programme and other hunger relief agencies. This effort helped save over 1.6 million people from starvation in remote corners of the world, where hunger is most prevalent.

Federal Per Serving Backgrounder

NLEA

In 1990, Congress passed and President Bush enacted the Nutrition Labeling and Education Act (NLEA). This required (Section 343(q)) that food sellers disclose “the total number of calories”:

“(A)

(i) the serving size which is an amount customarily consumed and which is expressed in a common household measure that is appropriate to the food, or

(ii) if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food,

(B) the number of servings or other units of measure per container”

With restaurants exempt from NLEA, the FDA has over the years (as recently as April 2008) released opinions and advisories on how restaurants (either voluntary means or by mandates) should disclose nutrition (calorie) information. In each case, the FDA has provided the following opinion:

“Should a restaurant provide nutrition information on a “per serving” basis, or can the information be declared by other units or measures, such as “per item” or “per unit?” For example, if a restaurant sells whole pizza and pizza by the slice, how should nutrition information be declared?

Answer: Generally, nutrition information should be presented on a per serving basis. Nutrition information on a per unit basis could be appropriate when a single unit may also be a single serving. However, the basis for the information must be clearly communicated to consumers.

It is especially important that the basis be declared when a food is available in more than one size serving (e.g., pizza that is available whole and by the slice), or soup that is available by the cup or by the bowl. The restaurant may provide additional information, such as “8 slices per medium 16-inch pizza, 1 slice contains...” to help consumers put nutrition information in context.

Conversely, it would be misleading to present the information on a per item basis when a serving generally contains more than one item of the food, for example, if a single serving of cookies contains more than one cookie.”

Menu Labeling Per Serving Provisions

California – Enacted

(d) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is a combination of at least two standard menu items on the menu or menu board, shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories for the calorie count information. If there is only one possible total amount of calories, then this total shall be disclosed.

(e) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is not an appetizer or dessert, but is intended to serve more than one individual, shall include both of the following:

(1) The number of individuals intended to be served by the standard menu item.

(2) The calorie content information per individual serving. If the standard menu item is a combination of at least two standard menu items, this disclosure shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories. If there is only one possible total amount of calories, then this total shall be disclosed.

Connecticut – Vetoed by Governor

For any standard menu item, other than a food item displayed with a food item tag, that is intended to serve more than one individual, the standard printed menu or menu board shall include the number of individuals intended to be served by such menu item and the total number of calories per individual serving. For any standard menu item that is listed or pictured as a single menu item or prepared as a combination of two or more standard menu items, the total number of calories shall be based upon all possible combinations for such standard menu item and shall include the minimum and maximum number of calories for such standard menu item. If there is only one possible total number of calories for the combination, then this total shall be disclosed.

Hawaii – Passed House of Representatives, Carries Over

e) For purposes of subsections (b), (c), and (d), the disclosure of calorie content information on a menu, menu board, or display tag next to a standard menu item that is a combination of at least two standard menu items on the menu or menu board, shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories for the calorie count information. If there is only one possible total amount of calories, then this total shall be disclosed.

(f) For purposes of subsections (b), (c), and (d), the disclosure of calorie content information on a menu, menu board, or display tag next to a standard menu item that is not an appetizer or dessert, but is intended to serve more than one individual, shall include the following:

- (1) The number of individuals intended to be served by the standard menu item; and
- (2) The calorie content information per individual serving.

Oregon - Enacted

SECTION 2a. { + (1) The disclosure of calorie content information under section 3 of this 2009 Act on a menu or menu board next to a standard menu item that is a combination of at least two standard menu items on the menu or menu board must, based on all possible combinations for that standard menu item, include the minimum amounts of calories for the calorie content information and the maximum amounts of calories for the calorie content information. If there is only one possible total amount of calories, that total must be disclosed.

(2) The disclosure of calorie content information on a menu or menu board next to a standard menu item that is not an appetizer or dessert, but is intended to serve more than one individual, shall:

(a) (A) Include the number of individuals intended to be served by the standard menu item; and

(B) Include the calorie content information for an individual serving.

Nashville - Enacted

(iii) *Multiple Servings.* Calorie information that contains more than one serving or is intended to serve more than one individual shall include both of the following:

1. The number of servings intended to be provided in that menu item;
2. The calorie content per individual serving.



7-Eleven, Inc.

November 12, 2009

The Honorable George Leventhal
At-Large
Montgomery County Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Opposition to Bill 19-07 Eating and Drinking Establishments – Nutrition Labeling

Dear Council Member Leventhal:

We remain opposed to Bill 19-07 and are concerned that the Council is moving too quickly towards passage. It has been close to two years since a public hearing was held regarding this matter and much has changed. The most important change and best argument for slowing the process, is the very recent activity on Capitol Hill. ***Currently, both the pending U.S. Senate health care proposal and recently passed H.R. 3962 contain provisions specifically related to menu labeling requirements.***

Other additional concerns include:

1. ***It will hit small business owners, franchisees, service station dealers and other like businesses during a very difficult time.*** Small business owners in Montgomery County are facing close to a 300% unemployment tax rate increase effective January 1, 2010.
2. 7-Eleven's and service station dealers are not restaurants. ***We look more like a grocery store than a restaurant.*** The overwhelming majority of our products sold are packaged and labeled. We should be exempt – or have more flexibility in compliance.
3. With Federal action afoot, ***passage right now could create a conflict and unnecessary confusion for the business community in Montgomery County.***

There have been numerous references to New York City's legislation. The New York City legislation is not applicable to 7-Eleven. Please reconsider your timing and support for this proposal.

Sincerely,

Steve Watson
Regional Manager of Government Affairs

Cc: Montgomery County Council
The Honorable Isiah Leggett

Marin, Sandra

Am
cc

From: Andrews' Office, Councilmember
Sent: Wednesday, October 28, 2009 4:25 PM
To: Montgomery County Council
Subject: FW: Proposed Bill 19-07: Nutrition Labeling

052129

-----Original Message-----

From: Doug Murdoch [mailto:doug@midatlanticnato.com]
Sent: Wednesday, October 28, 2009 4:15 PM
To: Andrews' Office, Councilmember
Subject: Proposed Bill 19-07: Nutrition Labeling

Dear Council President Andrews.

On behalf of Mid-Atlantic NATO (National Association of Theatre Owners), an association representing Movie Theatres throughout Maryland, we respectfully submit these written comments regarding Bill 19-07 and **specifically request that Movie Theatres be exempt from any menu labeling regulation.** Our position is based on the following issues:

- The proposed regulation's definition of "certain eating and drinking establishments" is broad and far reaching. As loosely outlined, any business requiring a food permit might be included in the described "eating establishment." If left to interpretation this would include movie theatre concession stands that sell mainly pre-packaged items vs. prepared meals for which this bill was intended. In other words, the proposed bill implies that the regulation will only apply to "certain" chain restaurants, but has no clear definition of what those "certain" establishments would include. As written, this bill will have numerous unintended consequences.
- According to the Motion Picture Association of America, the average American moviegoer attends a movie at a theatre 4.64 times per year. Concession sales are only incidental to the primary service of motion picture entertainment. Additionally, according to Regal Entertainment Group, the largest theatre circuit in the world, only 51% of their patrons visit the concession stand. Of those 51%, many purchase only bottled water and many more purchase prepackaged snacks already listing nutritional information on the package. Therefore, since moviegoers purchase concessions only 2.3 times per year and since only a portion of such purchases would be subject to menu labeling requirements, the burdens (including the cost of producing and maintaining menu labeling requirements) imposed on the movie theatre businesses would significantly outweigh any benefit to the residents of Montgomery County.
- Where the movie theatre industry has had an opportunity to provide information and participate in the process, regulators have specifically exempted movie theatres. Earlier this year, the attached amendment was offered to the committee handling Maryland House Bill 601 by its sponsor Delegate Niemann. Others such as Multnomah County (Portland, Ore) voted 5-0 to adopt an ordinance that specifically excludes movie theaters. This also occurred in Seattle Washington when the King County Board of Health exempted movie theatres from menu labeling requirements.

For these reasons we request that movie theatres be exempt.

Respectfully submitted,

Doug Murdoch
Executive Director

Mid-Atlantic NATO (National Association of Theatre Owners)
P. O. Box 1150
Brooklandville, MD 21022-1150
Office 410-252-5010 – Cell 443-895-1446
doug@midatlanticnato.com

10/29/2009

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| AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE SERVICES <i>Accanin</i> |
| 02 MAR 09 11:04:24 |

BY: Delegate Niemann

(To be offered in the Health and Government Operations
Committee)

AMENDMENTS TO HOUSE BILL 601

(First Reading File Bill)

AMENDMENT NO. 1

On page 2, in line 20, after "(B)" insert "(1)"; in lines 21, 22, and 25, strike "(1)", "(2)", and "(3)", respectively, and substitute "(I)", "(II)", and "(III)", respectively; and after line 26, insert:

"(2) "CHAIN RESTAURANT" DOES NOT INCLUDE:

(I) A FULL SERVICE SUPERMARKET OR GROCERY STORE;

(II) A CONVENIENCE STORE; OR

(III) A MOVIE THEATER."

AMENDMENT NO. 2

On page 3, in line 2, strike "OR"; in line 4, after "CHARGE" insert "; OR

(3) ITEMS SERVED ON A BUFFET THAT HAVE NO STANDARD
SERVING SIZE";

and in line 24, after "DISPLAY" insert "AND SERVED IN STANDARD-SIZED
PORTIONS".

(Over)

New York study says menu labeling affects behavior



By David Morgan

Mon Oct 26, 3:57 pm ET

WASHINGTON (Reuters) – New York's mandate that fast-food restaurants post calorie information on their menus has changed consumer habits, the city said on Monday, contradicting a recent independent study showing no effect.

The city's Department of Health and Mental Hygiene released preliminary data showing evidence that people bought food with fewer calories at nine of the 13 fast-food and coffee chains included in a study on the effects of menu-labeling laws that went into effect in 2008.

Researchers surveyed more than 10,000 customers at 275 locations in early 2007 and another 12,000 this year.

They found statistically significant decreases at four chains -- McDonald's, Au Bon Pain, KFC and Starbucks -- and said diners who saw and acted on calorie information bought food containing 106 fewer calories on average than those who did not notice the postings.

All told, 56 percent of fast-food customers reported seeing the calorie information, researchers told the annual meeting of the Obesity Society in Washington.

The earlier study by researchers at New York University and Yale University, which included 1,156 adults who ate at Burger King, KFC, McDonald's and Wendy's immediately before and after the rule went into effect, found no change to consumer habits in low-income neighborhoods.

The city's researchers said their study was more representative of dining habits because it included more people over a longer period of time and not limited to outlets in low-income neighborhoods.

In July 2008, New York became the first U.S. city to require fast food restaurants to post calorie counts in large type on menu boards.

The system has since become a model for similar rules intended to combat obesity and promote good nutrition in California, other parts of New York state, the cities of Seattle and Portland, and elsewhere.

Health advocates see menu labeling as a tool for fighting obesity. About one-third of U.S. adults are obese, a condition that increases the risk of heart disease, diabetes, cancer and other medical problems, and another one-third are overweight.

Both the city and New York University studies were funded by the nonprofit Robert Wood Johnson

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Foundation.

Lynn Silver, assistant commissioner for New York's Bureau of Chronic Disease Prevention and Control, said government findings show diners are noticing and acting on the labels.

"Dietary change is likely to come gradually; it will start with consumers interested in making informed, healthy eating decisions and we hope industry will respond by offering more healthier choices and appropriate portion sizes," she said in a statement.

But city researchers also found that the labeling laws' influence can be overcome by restaurant marketing.

The privately held Subway restaurant chain, which has promoted its menu as a vehicle for weight loss and healthy eating, posted calorie information on some of its menus before the labeling laws went into effect in 2008.

The number of calories purchased at Subway more than doubled during the study period, which coincided with an advertising campaign to promote larger 12-inch sandwiches. The calorie gain at Subway was roughly the same as losses at seven other food chains, researchers said.

(Editing by Philip Barbara)

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